

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2525

Introduced by Assembly Members Bonta and Levine

February 21, 2014

An act to amend Sections 12311, *17701.01*, and 25100 of, to amend the heading of Title 2.6 (commencing with Section 17701.01) of, to add the heading of Division 1 (commencing with Section 17701.01) to, and to add Division 2 (commencing with Section 17801.01) to, Title 2.6 of, the Corporations Code, relating to worker cooperative companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2525, as amended, Bonta. Limited Liability Worker Cooperative Act.

Existing law, the California Revised Uniform Limited Liability Company Act, governs the formation and operation of limited liability companies. Existing law authorizes a limited liability company to engage in any lawful business activity, except as specified, but prohibits construing the act to permit a limited liability company to render professional services, as defined. Existing law provides for the filing of specified records and further provides that an individual who signs such a record affirms under penalty of perjury that the information in the record is accurate.

Existing law, the Consumer Cooperative Corporation Law, provides for the organization and operation of primarily consumer cooperatives, and is also applicable to other cooperatives. Existing law provides for, among other things, information to be included in a cooperative corporation's by laws, the definition of terms for purposes of that law, and requirements as to voting rights of members and time periods for

sending notice of meetings at which members are entitled to vote. Existing law requires a cooperative corporation to include in its name the word “cooperative.”

This bill would establish the Limited Liability Worker Cooperative Act, which would provide for the organization and operation of worker cooperative companies. The bill would authorize a worker cooperative company to be formed for any lawful purpose provided that it is organized and conducts its business primarily for the mutual benefit of its members as patrons of the worker cooperative company. The bill would authorize a worker cooperative company to engage in any lawful business activity, except as specified, but would prohibit construing the act to permit a worker cooperative company to render professional services, as defined. *The bill would provide for, among other things, information to be included in a worker cooperative company’s articles of organization and operating agreement, requirements as to voting rights of members, and time periods for sending notice of meetings at which members are entitled to vote and would require an individual who signs specified records to affirm under penalty of perjury that the information in the record is accurate.* The bill would authorize certain classes of membership in the worker cooperative company, including a worker-member class. The bill would provide that members of the worker cooperative company have equal votes, but would authorize the worker-member class to have ultimate decisionmaking authority. The bill would authorize members of a class to vote separately on any matter. The bill would authorize a worker cooperative company to include in its name the word “cooperative.” *The bill would authorize a worker cooperative company to set aside portion of its profits before distribution, as specified.* The bill would define certain terms for its purposes. ~~The bill would specify that the provisions of the California Revised Uniform Limited Liability Act apply to worker cooperative companies, except as provided.~~ Because this bill would expand the scope of the crime of perjury, the bill would impose a state-mandated local program.

Existing law authorizes the majority of the members of a limited liability company to vote to dissolve, merge, or sell the limited liability company, or to convert the limited liability company to another business entity.

This bill would require $\frac{2}{3}$ of the worker-members of a worker cooperative company to vote to dissolve, merge, or sell the worker

cooperative company, or to convert the worker cooperative company to a business entity other than a worker cooperative company.

Existing law, the Corporate Securities Law of 1968, provides for the regulation of the issuance of corporate securities, requires the qualification of an offer or sale of securities, and provides for exemptions from qualification.

This bill would exempt the issuance of a membership by a *limited liability* worker cooperative company, as specified, from certain securities requirements.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12311 of the Corporations Code is
2 amended to read:
3 12311. (a) The names of all corporations formed under this
4 part shall include “cooperative.” No corporation shall be formed
5 under this part unless there is affixed or prefixed to its name some
6 word or abbreviation which will indicate that it is a corporation,
7 as distinguished from a natural person, a firm, or an unincorporated
8 association.
9 (b) No person shall adopt or use the word “cooperative” or any
10 abbreviation or derivation thereof, or any word similar thereto, as
11 part of the name or designation under which it does business in
12 this state, unless incorporated as provided in this part or organized
13 as a worker cooperative company under Division 2 (commencing
14 with Section 17801.01) of Title 2.6, or unless incorporated as a
15 nonprofit cooperative association under Chapter 1 (commencing
16 with Section 54001) of Division 20 of the Food and Agricultural
17 Code, as a stock cooperative, as defined in Section 11003.2 of the
18 Business and Professions Code, as a limited-equity housing
19 cooperative, as defined in Section 817 of the Civil Code, as a credit
20 union or organization owned for the mutual benefit of credit unions,
21 or under some other law of this state enabling it to do so. However,

1 the foregoing prohibition shall be inapplicable to any credit union
2 or organization owned for the mutual benefit of credit unions, any
3 housing cooperative, the financing of which is insured, guaranteed,
4 or provided, in whole or in part, by a public or statutorily chartered
5 entity pursuant to a program created for housing cooperatives, a
6 nonprofit corporation, a majority of whose membership is
7 composed of cooperative corporations, or an academic institution
8 that serves cooperative corporations.

9 (c) A domestic or foreign corporation or association which did
10 business in this state under a name or designation including the
11 word “cooperative” prior to September 19, 1939, and which
12 conducts business on a cooperative basis substantially as set forth
13 in this part, may continue to do business under that name or
14 designation.

15 (d) Any person, firm, individual, partnership, trust, domestic
16 corporation, foreign corporation, or association which did business
17 in this state under a name or designation including the word
18 “cooperative” prior to September 19, 1939, but which does not
19 conduct business on a cooperative basis as contemplated by Section
20 12201 of this part, may continue to do business under that name
21 or designation if the words “not organized under the law relating
22 to cooperative corporations” are always placed immediately after
23 the name or designation wherever it is used.

24 (e) Any foreign corporation, organized under and complying
25 with the cooperative law of the state or other jurisdiction of its
26 creation, may use the term “cooperative” in this state if it has
27 complied with the laws of this state applicable to foreign
28 corporations, insofar as those laws are applicable to it, and if it is
29 doing business on a cooperative basis as contemplated by Section
30 12201.

31 SEC. 2. The heading of Title 2.6 (commencing with Section
32 17701.01) of the Corporations Code is amended to read:

33
34 TITLE 2.6. LIMITED LIABILITY COMPANIES
35

36 SEC. 3. The heading of Division 1 (commencing with Section
37 17701.01) is added to Title 2.6 of the Corporations Code, to read:

38
39 DIVISION 1. CALIFORNIA REVISED UNIFORM LIMITED
40 LIABILITY COMPANY ACT

1 ~~SEC. 4. Division 2 (commencing with Section 17801.01) is added~~
2 ~~to Title 2.6 of the Corporations Code, to read:~~

3
4 ~~DIVISION 2. LIMITED LIABILITY WORKER~~
5 ~~COOPERATIVE ACT~~
6

7 ~~Article 1. General Provisions~~
8

9 ~~17801.01. (a) The Legislature finds and declares that the~~
10 ~~formation of employee-owned businesses and the participation of~~
11 ~~employees in the management of businesses in this state will~~
12 ~~promote the stabilization of local economies, anchor business~~
13 ~~activity, and increase productivity. The Legislature further finds~~
14 ~~that the encouragement of employee-owned businesses will~~
15 ~~increase and broaden community investments in this state and~~
16 ~~encourage new capital formation through employee ownership.~~

17 ~~(b) This division may be cited as the Limited Liability Worker~~
18 ~~Cooperative Act.~~

19 ~~(c) (1) A worker cooperative company may be formed under~~
20 ~~this division for any lawful purpose provided that it is organized~~
21 ~~and conducts its business primarily for the mutual benefit of its~~
22 ~~members as patrons of the worker cooperative company.~~

23 ~~(2) The earnings, savings, or benefits of the company shall be~~
24 ~~used for the general welfare of the members or shall be~~
25 ~~proportionately and equitably distributed to some or all of its~~
26 ~~members or its patrons, based upon their patronage of the company,~~
27 ~~in the form of cash, property, evidences of indebtedness, capital~~
28 ~~credits, memberships, or services.~~

29 ~~(3) Worker cooperative companies are democratically controlled~~
30 ~~and are not organized to make a profit for themselves, as such, or~~
31 ~~for their members, as such, but primarily for their members as~~
32 ~~patrons.~~

33 ~~17801.02. (a) Except as provided in this section, the definitions~~
34 ~~of Section 17701.02 shall apply to this division.~~

35 ~~(b) For purposes of this division, the following definitions apply:~~

36 ~~(1) "Class" refers to those memberships that: (A) are identified~~
37 ~~in the articles of organization or operating agreement as being a~~
38 ~~different type of membership; or (B) have the same rights with~~
39 ~~respect to voting, dissolution, redemption, distributions, and~~
40 ~~transfer. For the purpose of this subdivision, rights shall be~~

1 considered the same if they are determined by a formula applied
2 uniformly.

3 (2) ~~“Distribution” shall mean both dividend distribution and~~
4 ~~patronage distribution.~~

5 (3) ~~“Member” has the same meaning as in subdivision (p) of~~
6 ~~Section 17701.02. A member may also be a patron of the worker~~
7 ~~cooperative company.~~

8 (4) ~~“Patron” means any of the following:~~

9 (A) ~~A member who provides personal services to, purchases~~
10 ~~goods from, or uses the services of the worker cooperative~~
11 ~~company.~~

12 (B) ~~A person who uses the worker cooperative company to~~
13 ~~market, process, or handle their products or services.~~

14 (5) ~~“Patronage” means the amount of value created by a member~~
15 ~~measured as provided in the articles of organization or operating~~
16 ~~agreement of the worker cooperative company. Value may include~~
17 ~~personal services contributed, number of hours worked, job~~
18 ~~creation, or any other measure as provided in the articles of~~
19 ~~organization or operating agreement.~~

20 (6) ~~“Patronage distribution” means any transfer of cash or~~
21 ~~property made to a patron of the worker cooperative company, the~~
22 ~~amount of which is computed with reference to the patron’s~~
23 ~~patronage of the worker cooperative company.~~

24 (7) ~~“Worker” means a natural person who provides labor to the~~
25 ~~worker cooperative company in exchange for compensation.~~

26 (8) ~~“Worker cooperative company,” means an entity formed~~
27 ~~under this division or an entity that becomes subject to this division.~~
28 ~~A worker cooperative company is majority-controlled by its~~
29 ~~worker-members.~~

30 (9) ~~“Worker-member” means a worker who is a member of the~~
31 ~~worker cooperative company and whose patronage includes~~
32 ~~providing labor to the worker cooperative company.~~

33 17801.03. (a) ~~A worker cooperative company is an entity~~
34 ~~distinct from its members.~~

35 (b) ~~A worker cooperative company may have any lawful~~
36 ~~purpose, regardless of whether for profit, except the banking~~
37 ~~business, the business of issuing policies of insurance and assuming~~
38 ~~insurance risks, or the trust company business. A worker~~
39 ~~cooperative company may render services that may be lawfully~~
40 ~~rendered only pursuant to a license, certificate, or registration~~

1 authorized by the Business and Professions Code, the Chiropractic
2 Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if
3 the applicable provisions of the Business and Professions Code,
4 the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship
5 Brokers Act authorize a worker cooperative company to hold that
6 license, certificate, or registration.

7 (e) ~~A worker cooperative company has perpetual duration.~~

8 (d) ~~Nothing in this division shall be construed to permit a worker~~
9 ~~cooperative company to render professional services, as defined~~
10 ~~in subdivision (a) of Section 13401 and in Section 13401.3, in this~~
11 ~~state.~~

12 ~~17801.04. (a) Each member of the worker cooperative~~
13 ~~company shall have an equal vote in their membership class, but~~
14 ~~the worker-member class shall have ultimate decisionmaking~~
15 ~~authority.~~

16 (b) ~~Notwithstanding subdivision (r) of Section 17704.07,~~
17 ~~members of a specified class or group of members may vote~~
18 ~~separately or with all or any class or group of members on any~~
19 ~~matter.~~

20 (c) ~~If the proprietary interests of the members are unequal, the~~
21 ~~worker cooperative company must state this in its articles.~~

22 ~~17801.05. The Secretary of State shall provide on its Internet~~
23 ~~Web site information and sample documents for forming a worker~~
24 ~~cooperative company.~~

25 ~~17801.06. The provisions of Division 1 (commencing with~~
26 ~~Section 17701.01) shall apply to a worker cooperative company,~~
27 ~~except where a provision is in conflict with, or inconsistent with~~
28 ~~the provisions of this division.~~

29 *SEC. 4. Section 17701.01 of the Corporations Code is amended*
30 *to read:*

31 *17701.01. This title division may be cited as the California*
32 *Revised Uniform Limited Liability Company Act.*

33 *SEC. 5. Division 2 (commencing with Section 17801.01) is*
34 *added to Title 2.6 of the Corporations Code, to read:*

*DIVISION 2. LIMITED LIABILITY WORKER COOPERATIVE
ACT*

Article 1. General Provisions

17801.01. (a) The Legislature finds and declares that the formation of employee-owned businesses and the participation of employees in the management of businesses in this state will promote the stabilization of local economies, anchor business activity, and increase productivity. The Legislature further finds that the encouragement of employee-owned businesses will increase and broaden community investments in this state and encourage new capital formation through employee ownership.

(b) This division may be cited as the Limited Liability Worker Cooperative Act.

(c) (1) A worker cooperative company may be formed under this division for any lawful purpose provided that it is organized and conducts its business primarily for the mutual benefit of its members as patrons of the worker cooperative company.

(2) The earnings, savings, or benefits of the worker cooperative company shall be used for the general welfare of the members or shall be proportionately and equitably distributed to some or all of its members or its patrons, based upon their patronage of the worker cooperative company.

17801.02. In this division:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature:

"It is hereby declared that I am the person who executed this instrument which execution is my act and deed."

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

1 (b) “Articles of organization” means the articles required by
2 Section 17802.01. The term includes the articles of organization
3 as amended or restated.

4 (c) “Class” refers to those memberships that: (A) are identified
5 in the articles of organization or operating agreement as being a
6 different type of membership; or (B) have the same rights with
7 respect to voting, dissolution, redemption, distributions, and
8 transfer. For the purpose of this subdivision, rights shall be
9 considered the same if they are determined by a formula applied
10 uniformly.

11 (d) “Contribution” means any benefit provided by a person to
12 a worker cooperative company:

13 (1) In order to become a member upon formation of the worker
14 cooperative company and in accordance with an agreement
15 between or among the persons that have agreed to become the
16 initial members of the worker cooperative company.

17 (2) In order to become a member after formation of the worker
18 cooperative company and in accordance with an agreement
19 between the person and the worker cooperative company.

20 (3) In the person’s capacity as a member and in accordance
21 with the operating agreement or an agreement between the member
22 and the worker cooperative company.

23 (e) “Debtor in bankruptcy” means a person that is the subject
24 of either of the following:

25 (1) An order for relief under Title 11 of the United States Code
26 or a successor statute of general application.

27 (2) A comparable order under federal, state, or foreign law
28 governing bankruptcy or insolvency, an assignment for the benefit
29 of creditors, or an order appointing a trustee, receiver, or
30 liquidator of the person or of all or substantially all of the person’s
31 property.

32 (f) “Designated office” means the office that a worker
33 cooperative company is required to designate and maintain under
34 Section 17801.13.

35 (g) “Distribution,” except as otherwise provided in subdivision
36 (g) of Section 17804.05, means a transfer of money or other
37 property from a worker cooperative company to another person
38 on account of a transferable interest or on account of a member’s
39 patronage of the company. The term distribution shall apply to
40 “dividend distributions” and “patronage distributions.”

1 (h) “Dividend distribution” means a distribution based on a
2 member’s transferable interest, but does not include patronage
3 distributions. Dividend distributions shall not exceed 15 percent
4 of a member’s transferable interest in any fiscal year.

5 (i) “Domestic” means organized under the laws of this state
6 when used in relation to any worker cooperative company, other
7 business entity, or person other than a natural person.

8 (j) “Effective,” with respect to a record required or permitted
9 to be delivered to the Secretary of State for filing under this
10 division, means effective under subdivision (c) of Section 17802.05.

11 (k) (1) “Electronic transmission by the worker cooperative
12 company” means a communication delivered by any of the
13 following means:

14 (A) Facsimile telecommunication or electronic mail when
15 directed to the facsimile number or electronic mail address,
16 respectively, for that recipient on record with the worker
17 cooperative company.

18 (B) Posting on an electronic message board or network that the
19 worker cooperative company has designated for those
20 communications, together with a separate notice to the recipient
21 of the posting, which transmission shall be validly delivered upon
22 the later of the posting or delivery of the separate notice thereof.

23 (C) Other means of electronic communication to which both of
24 the following apply:

25 (i) The communication is delivered to a recipient who has
26 provided an unrevoked consent to the use of those means of
27 transmission.

28 (ii) The communication creates a record that is capable of
29 retention, retrieval, and review, and that may thereafter be
30 rendered into clearly legible tangible form. However, an electronic
31 transmission by a worker cooperative company to an individual
32 member is not authorized unless, in addition to satisfying the
33 requirements of this section, the transmission satisfies the
34 requirements applicable to consumer consent to electronic records
35 as set forth in the federal Electronic Signatures in Global and
36 National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

37 (2) “Electronic transmission to the worker cooperative
38 company” means a communication delivered by any of the
39 following means:

1 (A) *Facsimile telecommunication or electronic mail when*
2 *directed to the facsimile number or electronic mail address,*
3 *respectively, that the worker cooperative company has provided*
4 *from time to time to members or managers for sending*
5 *communications to the worker cooperative company.*

6 (B) *Posting on an electronic message board or network that the*
7 *worker cooperative company has designated for those*
8 *communications, which transmission shall be validly delivered*
9 *upon the posting.*

10 (C) *Other means of electronic communication to which both of*
11 *the following apply:*

12 (i) *The worker cooperative company has placed in effect*
13 *reasonable measures to verify that the sender is the member or*
14 *manager, in person or by proxy, purporting to send the*
15 *transmission.*

16 (ii) *The communication creates a record that is capable of*
17 *retention, retrieval, and review, and that may thereafter be*
18 *rendered into clearly legible tangible form.*

19 (l) *“Financial rights” means the right to participate in*
20 *allocations and distributions as provided in Section 17804.04 but*
21 *does not include voting rights or the right or obligation, if any, to*
22 *do business with the cooperative.*

23 (m) *“Limited liability worker cooperative company,” “worker*
24 *cooperative company,” or “cooperative company” means an entity*
25 *formed under this division or an entity that becomes subject to this*
26 *division pursuant to Article 12 (commencing with Section*
27 *17812.01). A worker cooperative company is majority-controlled*
28 *by its class of worker-members.*

29 (n) *“Majority of the managers” unless otherwise provided in*
30 *the operating agreement, means more than 50 percent of the*
31 *managers of the worker cooperative company.*

32 (o) *“Majority of the members” unless otherwise provided in*
33 *the operating agreement, means more than 50 percent of the*
34 *members of the worker cooperative company.*

35 (p) *“Majority of the worker-members” means, unless otherwise*
36 *provided in the operating agreement, more than 50 percent of the*
37 *worker-members.*

38 (q) *“Manager” means a person that under the operating*
39 *agreement of a manager-managed worker cooperative company*
40 *is responsible, alone or in concert with others, for performing the*

1 management functions stated in subdivision (c) of Section
2 17804.07.

3 (r) “Manager-managed worker cooperative company” means
4 a worker cooperative company that qualifies under subdivision
5 (a) of Section 17804.07.

6 (s) “Meeting of all the members” means a meeting in which all
7 member classes may vote and participate.

8 (t) “Meeting of the worker-members” means a meeting in which
9 only the worker-member class may vote or participate.

10 (u) “Member” means a person that has become a member of a
11 worker cooperative company under Section 17804.01 and has not
12 dissociated under Section 17806.02.

13 (v) “Member-managed worker cooperative company” means
14 a worker cooperative company that is not a manager-managed
15 worker cooperative company.

16 (w) “Membership interest” means a member’s rights in the
17 worker cooperative company, including the member’s transferable
18 interest, any right to vote or participate in management, and any
19 right to information concerning the business and affairs of the
20 worker cooperative company provided by this division, and the
21 right or obligation to do business with the worker cooperative
22 company.

23 (x) “Nonworker member” means a member of the worker
24 cooperative company who is not a worker-member.

25 (y) “Operating agreement” means the agreement, whether or
26 not referred to as an operating agreement and whether oral, in a
27 record, implied, or in any combination thereof, of all the members
28 of a worker cooperative company, including a sole member,
29 concerning the matters described in subdivision (a) of Section
30 17801.10. The term “operating agreement” may include, without
31 more, an agreement of all members to organize a worker
32 cooperative company pursuant to this division. An operating
33 agreement of a worker cooperative company having only one
34 member shall not be unenforceable by reason of there being only
35 one person who is a party to the operating agreement. The term
36 includes the agreement as amended or restated.

37 (z) “Organization” means, whether domestic or foreign, a
38 partnership whether general or limited, worker cooperative
39 company, association, corporation, professional corporation,

1 professional association, nonprofit corporation, business trust, or
2 statutory business trust having a governing statute.

3 (aa) “Organizer” means a person that acts under Section
4 17802.01 to form a worker cooperative company.

5 (ab) “Patron” means a person who provides labor to, purchases
6 goods from, or uses the services of, the worker cooperative
7 company.

8 (ac) “Patron member” means a member that is permitted or
9 required to conduct patronage with the worker cooperative
10 company to receive the member’s interest.

11 (ad) “Patronage” means the amount of value created by a
12 member measured as provided in the articles of organization or
13 operating agreement of the worker cooperative company. Value
14 may include personal services contributed, number of hours
15 worked, job creation, or any other measure as provided in the
16 articles of organization or operating agreement. The amount of
17 value shall not be calculated with reference to a member’s
18 transferable interest.

19 (ae) “Patronage distribution” means any transfer of cash or
20 property made to a patron of the worker cooperative company,
21 the amount of which is computed with reference to the patron’s
22 patronage of the worker cooperative company.

23 (af) “Person” means an individual, partnership, limited
24 partnership, trust, estate, association, corporation, cooperative
25 corporation, limited liability company, worker cooperative
26 company, or other entity, whether domestic or foreign. Nothing in
27 this subdivision shall be construed to confer any rights under the
28 California Constitution or the United States Constitution.

29 (ag) “Principal office” means the principal executive office of
30 a worker cooperative company, whether or not the office is located
31 in this state.

32 (ah) “Record” means information that is inscribed on a tangible
33 medium or that is stored in an electronic or other medium and is
34 retrievable in perceivable form.

35 (ai) “State” means a state of the United States, the District of
36 Columbia, Puerto Rico, the United States Virgin Islands, or any
37 territory or insular possession subject to the jurisdiction of the
38 United States.

1 (aj) “Transfer” includes an assignment, conveyance, deed, bill
2 of sale, lease, mortgage, security interest, encumbrance, gift, and
3 transfer by operation of law.

4 (ak) “Transferable interest” means the right, as originally
5 associated with a person’s capacity as a member, to receive
6 distributions from a worker cooperative company in accordance
7 with the operating agreement, whether or not the person remains
8 a member or continues to own any part of the right.

9 (al) “Transferee” means a person to which all or part of a
10 transferable interest has been transferred, whether or not the
11 transferor is a member.

12 (am) “Vote” includes authorization by written consent or
13 consent given by electronic transmission to the worker cooperative
14 company.

15 (an) “Voting member” means a member that, under this division
16 or articles or operating agreement, has a right to vote on matters
17 subject to vote by members under this division or articles or
18 operating agreement.

19 (ao) “Worker” means a natural person who provides labor to
20 the worker cooperative company with the expectation of receiving
21 compensation, a share of the profits, or both.

22 (ap) “Worker-member” means a worker who is a patron
23 member of the worker cooperative company and whose patronage
24 includes providing labor to the worker cooperative company.

25 17801.04. (a) A worker cooperative company is an entity
26 distinct from its members.

27 (b) A worker cooperative company may have any lawful purpose,
28 except the banking business, the business of issuing policies of
29 insurance and assuming insurance risks, or the trust company
30 business, provided that it is organized and conducts its business
31 primarily for the mutual benefit of its members as patrons of the
32 company. Worker cooperative companies are democratically
33 controlled and are not organized to make a profit for themselves,
34 as such, or for their members, as such, but primarily for their
35 members as patrons.

36 (c) A worker cooperative company may render services that
37 may be lawfully rendered only pursuant to a license, certificate,
38 or registration authorized by the Business and Professions Code,
39 the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship
40 Brokers Act, if the applicable provisions of the Business and

1 *Professions Code, the Chiropractic Act, the Osteopathic Act, or*
2 *the Yacht and Ship Brokers Act authorize a worker cooperative*
3 *company to hold that license, certificate, or registration.*

4 *(d) A worker cooperative company has perpetual duration.*

5 *(e) Notwithstanding subdivision (c) and as specifically provided*
6 *in this subdivision, a worker cooperative company may operate*
7 *as a health care service plan licensed pursuant to Chapter 2.2*
8 *(commencing with Section 1340) of Division 2 of the Health and*
9 *Safety Code if the worker cooperative company is a subsidiary of*
10 *a health care service plan licensed pursuant to those provisions*
11 *and the worker cooperative company is established to serve an*
12 *existing line of business of the parent health care service plan.*
13 *Notwithstanding any other law, the tort or contract liability of a*
14 *worker cooperative company created to operate as a health care*
15 *service plan under this subdivision and its members is not limited*
16 *or restricted in any manner because of the worker cooperative*
17 *company status of the health care service plan.*

18 *(f) Nothing in this division shall be construed to permit a*
19 *domestic worker cooperative company to render professional*
20 *services, as defined in subdivision (a) of Section 13401 and in*
21 *Section 13401.3, in this state.*

22 *17801.05. Subject to any limitations contained in the articles*
23 *of organization and to compliance with this division and any other*
24 *applicable laws, a worker cooperative company organized under*
25 *this division shall have all the powers of a natural person in*
26 *carrying out its business activities, including, without limitation,*
27 *the power to:*

28 *(a) Transact its business, carry on its operations, qualify to do*
29 *business, and have and exercise the powers granted by this division*
30 *in any state, territory, district, possession, or dependency of the*
31 *United States, and in any foreign country.*

32 *(b) Sue, be sued, complain, and defend any action, arbitration,*
33 *or proceeding, whether judicial, administrative, or otherwise, in*
34 *its own name.*

35 *(c) Adopt, use, and at will alter a company seal. However,*
36 *failure to affix a seal does not affect the validity of any instrument.*

37 *(d) Make contracts and guarantees, incur liabilities, act as*
38 *surety, or borrow money.*

39 *(e) Sell, lease, exchange, transfer, convey, mortgage, pledge,*
40 *or otherwise dispose of all or any part of its property and assets.*

1 (f) Purchase, take, receive, lease, or otherwise acquire, own,
2 hold, improve, use, or otherwise deal in and with any interest in
3 real or personal property, wherever located.

4 (g) Lend money to and otherwise assist its members and
5 employees.

6 (h) Issue notes, bonds, and other obligations and secure any of
7 them by mortgage or deed of trust or security interest of any or
8 all of its assets.

9 (i) Purchase, take, receive, subscribe for, or otherwise acquire,
10 own, hold, vote, use, employ, sell, mortgage, loan, pledge, or
11 otherwise dispose of and otherwise use and deal in and with stock
12 or other interests in and obligations of any person, or direct or
13 indirect obligations of the United States or of any government,
14 state, territory, governmental district, or municipality, or of any
15 instrumentality of any of them.

16 (j) Invest its surplus funds, lend money from time to time in any
17 manner which may be appropriate to enable it to carry on the
18 operations or fulfill the purposes set forth in its articles of
19 organization, or take and hold real property and personal property
20 as security for the payment of funds so loaned or invested.

21 (k) Be a promoter, stockholder, partner, member, manager,
22 associate, or agent of any person.

23 (l) Indemnify or hold harmless any person.

24 (m) Purchase and maintain insurance.

25 (n) Issue, purchase, redeem, receive, take, or otherwise acquire,
26 own, hold, sell, lend, exchange, transfer, or otherwise dispose of,
27 pledge, use, and otherwise deal in and with its own bonds,
28 debentures, and other securities.

29 (o) Pay pensions and establish and carry out pension, profit
30 sharing, bonus, share purchase, option, savings, thrift, and other
31 retirement, incentive, and benefit plans, trusts, and provisions for
32 all or any of the current or former members, managers, officers,
33 or employees of the worker cooperative company or any of its
34 subsidiary or affiliated entities, or to indemnify and purchase and
35 maintain insurance on behalf of any fiduciary of those plans, trusts,
36 or provisions.

37 (p) Make donations, regardless of specific benefit to the worker
38 cooperative company, to the public welfare or for community,
39 civic, religious, charitable, scientific, literary, educational, or
40 similar purposes.

1 (q) *Make payments or donations or do any other act, not*
2 *inconsistent with this division or any other applicable law, that*
3 *further the business and affairs of the worker cooperative*
4 *company.*

5 (r) *Pay compensation, and pay additional compensation, to any*
6 *or all managers, officers, members, and employees on account of*
7 *services previously rendered to the worker cooperative company,*
8 *whether or not an agreement to pay that compensation was made*
9 *before the services were rendered.*

10 (s) *Insure for its benefit the life of any of its members, managers,*
11 *officers, or employees, insure the life of any member for the*
12 *purpose of acquiring at his or her death the interest owned by the*
13 *member, and continue the insurance after the relationship*
14 *terminates.*

15 (t) *Carry out every other act not inconsistent with law that is*
16 *appropriate to promote and attain the purposes set forth in its*
17 *articles of organization.*

18 17801.06. *The law of this state governs all of the following:*

19 (a) *The internal affairs of a worker cooperative company.*

20 (b) *The liability of a member as member and a manager as*
21 *manager for the debts, obligations, or other liabilities of a worker*
22 *cooperative company.*

23 (c) *The authority of the members and agents of a worker*
24 *cooperative company.*

25 17801.07. (a) *It is the policy of this division and this state to*
26 *give maximum effect to the principles of freedom of contract and*
27 *to the enforceability of operating agreements.*

28 (b) *Unless displaced by particular provisions of this division,*
29 *the principles of law and equity supplement this division.*

30 (c) *Rules that statutes in derogation of the common law are to*
31 *be strictly construed shall have no application to this division.*

32 (d) *Unless the context otherwise requires, as used in this*
33 *division, the singular shall include the plural and the plural may*
34 *refer to only the singular. The use of any gender shall be applicable*
35 *to all genders.*

36 17801.08. (a) *The name of a limited liability worker*
37 *cooperative company shall contain the words "limited liability*
38 *worker cooperative company," "worker cooperative company,"*
39 *"limited worker cooperative," or "cooperative." and may be*
40 *abbreviated as "L.L.W.C.C." or "LLWCC." "Limited" may be*

1 *abbreviated as “Ltd.” “Cooperative” may be abbreviated as*
2 *“Co-op” or “Coop.” “Company” may be abbreviated as “Co.”*

3 *(b) Unless authorized by subdivision (c), the name of a worker*
4 *cooperative company shall not be a name that the Secretary of*
5 *State determines is likely to mislead the public and shall be*
6 *distinguishable in the records of the Secretary of State from all of*
7 *the following:*

8 *(1) The name of any worker cooperative company, limited*
9 *liability company, authorized to transact business in this state.*

10 *(2) Each name reserved under Section 17801.09.*

11 *(c) A worker cooperative company may apply to the Secretary*
12 *of State for authorization to use a name that does not comply with*
13 *subdivision (b). The Secretary of State shall authorize use of the*
14 *name applied for if, as to each noncomplying name, either of the*
15 *following applies:*

16 *(1) The present user, registrant, or owner of the noncomplying*
17 *name consents in a signed record to the use and submits an*
18 *undertaking in a form satisfactory to the Secretary of State to*
19 *change the noncomplying name to a name that complies with*
20 *subdivision (b) and is distinguishable in the records of the*
21 *Secretary of State from the name applied for.*

22 *(2) The applicant delivers to the Secretary of State a certified*
23 *copy of the final judgment of a court establishing the applicant’s*
24 *right to use in this state the name applied for.*

25 *(d) The name shall not include the words “bank,” “trust,”*
26 *“trustee,” “incorporated,” “inc.,” “corporation,” or “corp.” and*
27 *shall not include the words “insurer” or “insurance company”*
28 *or any other words suggesting that it is in the business of issuing*
29 *policies of insurance and assuming insurance risks.*

30 *17801.09. (a) A person may reserve the exclusive use of the*
31 *name of a worker cooperative company by delivering an*
32 *application to the Secretary of State. The application shall state*
33 *the name and address of the applicant and the name proposed to*
34 *be reserved. If the Secretary of State finds that the name applied*
35 *for is available, it shall be reserved for the applicant’s exclusive*
36 *use for up to 60 days. The Secretary of State shall not issue*
37 *certificates reserving the same name for two or more consecutive*
38 *60-day periods to the same applicant or for the use or benefit of*
39 *the same person; nor shall consecutive reservations be made by*
40 *or for the use or benefit of the same person for a name so similar*

1 *as to fall within the prohibitions of subdivision (b) of Section*
2 *17801.08.*

3 *(b) The owner of a name reserved for a worker cooperative*
4 *company may transfer the reservation to another person by*
5 *delivering to the Secretary of State for filing a signed notice of the*
6 *transfer which states the name and address of the transferee.*

7 *17801.10. (a) Except as otherwise provided in this section,*
8 *the operating agreement governs all of the following:*

9 *(1) Relations among the members as members and between the*
10 *members and the worker cooperative company.*

11 *(2) The rights and duties under this division of a person in the*
12 *capacity of manager.*

13 *(3) The activities of the worker cooperative company and the*
14 *conduct of those activities.*

15 *(4) The means and conditions for amending the operating*
16 *agreement.*

17 *(b) To the extent the operating agreement does not otherwise*
18 *provide for a matter described in subdivision (a), this division*
19 *governs the matter.*

20 *(c) An operating agreement shall not do any of the following:*

21 *(1) Vary a worker cooperative company's capacity under Section*
22 *17801.05 to sue and be sued in its own name.*

23 *(2) Vary the law applicable under Section 17801.06.*

24 *(3) Vary the power of the court under Section 17802.04.*

25 *(4) Subject to subdivisions (d) to (g), inclusive, eliminate the*
26 *duty of loyalty, the duty of care, or any other fiduciary duty.*

27 *(5) Subject to subdivisions (d) to (g), inclusive, eliminate the*
28 *contractual obligation of good faith and fair dealing under*
29 *subdivision (d) of Section 17804.09.*

30 *(6) Unreasonably restrict the duties and rights stated in Section*
31 *17804.10.*

32 *(7) Vary the power of a court to decree dissolution in the*
33 *circumstances specified in subdivision (a) of Section 17807.03 or*
34 *the provisions for avoidance of dissolution in subdivision (c) of*
35 *Section 17807.03.*

36 *(8) Except as stated herein, vary the requirements of Sections*
37 *17807.04 to 17807.08, inclusive.*

38 *(9) Unreasonably restrict the right of a member to maintain an*
39 *action under Article 8 (commencing with Section 17808.01).*

1 (10) Restrict the right to approve a merger, conversion, or
2 domestication under Section 17809.14 to a member that will have
3 personal liability with respect to a surviving, converted, or
4 domesticated organization.

5 (11) Except as otherwise provided in subdivision (b) of Section
6 17801.12, restrict the rights under this division of a person other
7 than a member or manager.

8 (12) Vary any provision under Article 9 (commencing with
9 Section 17809.01).

10 (13) Vary any provision under Article 10 (commencing with
11 Section 17810.01).

12 (14) Eliminate the duty of loyalty under subdivision (b) of
13 Section 17804.09, but the operating agreement may do any of the
14 following:

15 (A) Identify specific types or categories of activities that do not
16 violate the duty of loyalty, if not manifestly unreasonable.

17 (B) Specify the number or percentage of members that may
18 authorize or ratify, after full disclosure to all members of all
19 material facts, a specific act or transaction that otherwise would
20 violate the duty of loyalty.

21 (15) Unreasonably reduce the duty of care under subdivision
22 (c) of Section 17804.09.

23 (16) Eliminate the obligation of good faith and fair dealing
24 under subdivision (d) of Section 17804.09, but the operating
25 agreement may prescribe the standards by which the performance
26 of the obligation is to be measured, if the standards are not
27 manifestly unreasonable.

28 (d) Except as provided in subdivision (c) and subdivisions (e)
29 to (g), inclusive, the effects of the provisions of this division may
30 be varied as among the members or as between the members and
31 the worker cooperative company by the operating agreement;
32 provided, however, that the provisions of Sections 17801.13,
33 17803.01, 17804.07, and 17804.08 shall only be varied by a written
34 operating agreement. Notwithstanding the first sentence of this
35 subdivision and in addition to the matters specified in subdivision
36 (c), the operating agreement shall not do either of the following:

37 (1) Vary the definitions of Section 17801.02, except as
38 specifically provided therein.

39 (2) Vary a member's rights under Sections 17803.01 and
40 17804.10.

1 (e) *The fiduciary duties of a manager to the worker cooperative*
2 *company and to the members of the worker cooperative company*
3 *shall only be modified in a written operating agreement with the*
4 *informed consent of the members. Assenting to the operating*
5 *agreement pursuant to subdivision (b) of Section 17801.11 shall*
6 *not constitute informed consent.*

7 (f) *To the extent the operating agreement of a member-managed*
8 *worker cooperative company expressly relieves a member of a*
9 *responsibility that the member would otherwise have under this*
10 *division and imposes the responsibility on one or more other*
11 *members, the operating agreement may, to the benefit of the*
12 *member that the operating agreement relieves of the responsibility,*
13 *also eliminate or limit any fiduciary duty that would have pertained*
14 *to the responsibility.*

15 (g) *The operating agreement may alter or eliminate the*
16 *indemnification for a member or manager provided by subdivision*
17 *(a) of Section 17804.08 and may eliminate or limit a member or*
18 *manager's liability to the worker cooperative company and*
19 *members for money damages, except for the following:*

20 (1) *Breach of the duty of loyalty.*

21 (2) *A financial benefit received by the member or manager to*
22 *which the member or manager is not entitled.*

23 (3) *A member's liability for excess distributions under Section*
24 *17804.06.*

25 (4) *Intentional infliction of harm on the worker cooperative*
26 *company or a member.*

27 (5) *An intentional violation of criminal law.*

28 17801.11. (a) *A worker cooperative company is bound by and*
29 *may enforce the operating agreement.*

30 (b) *A person that becomes a member of a worker cooperative*
31 *company is deemed to assent to the operating agreement.*

32 (c) *Two or more persons intending to become the initial*
33 *members of a worker cooperative company may make an agreement*
34 *providing that upon the formation of the worker cooperative*
35 *company the agreement will become the operating agreement.*
36 *One person intending to become the initial member of a worker*
37 *cooperative company may assent to terms providing that upon the*
38 *formation of the worker cooperative company the terms will*
39 *become the operating agreement.*

1 17801.12. (a) An operating agreement may specify that its
2 amendment requires the approval of a person that is not a party
3 to the operating agreement or the satisfaction of a condition. An
4 amendment is ineffective if its adoption does not include the
5 required approval or satisfy the specified condition.

6 (b) The obligations of a worker cooperative company and its
7 members to a person in the person's capacity as a transferee or
8 dissociated member are governed by the operating agreement.
9 Subject only to any court order issued under paragraph (2) of
10 subdivision (b) of Section 17805.03 to effectuate a charging order,
11 an amendment to the operating agreement made after a person
12 becomes a transferee or dissociated member is effective with
13 regard to any debt, obligation, or other liability of the worker
14 cooperative company or its members to the person in the person's
15 capacity as a transferee or dissociated member.

16 (c) If a record that has been delivered by a worker cooperative
17 company to the Secretary of State for filing and has become
18 effective under this division contains a provision that would be
19 ineffective under subdivision (c) of Section 17801.10 if contained
20 in the operating agreement, the provision is likewise ineffective in
21 the record.

22 (d) Subject to subdivision (c), if a record that has been delivered
23 by a worker cooperative company to the Secretary of State for
24 filing and has become effective under this division conflicts with
25 a provision of the operating agreement both of the following apply:

26 (1) The operating agreement prevails as to members, dissociated
27 members, transferees, and managers.

28 (2) The record prevails as to other persons to the extent they
29 reasonably rely on the record.

30 17801.13. (a) A worker cooperative company shall designate
31 and continuously maintain in this state both of the following:

32 (1) An office, which need not be a place of its activity in this
33 state.

34 (2) An agent for service of process.

35 (b) An agent for service of process of a worker cooperative
36 company shall be an individual who is a resident of this state or
37 a corporation that has complied with Section 1505 and whose
38 capacity to act as an agent has not terminated. If a worker
39 cooperative company designates a corporation as its agent for
40 service of process in an instrument filed with the Secretary of State,

1 *no address for that agent for service of process shall be set forth*
2 *in that instrument.*

3 *(c) Each worker cooperative company shall maintain in writing*
4 *or in any other form capable of being converted into clearly legible*
5 *tangible form at the office referred to in subdivision (a) all of the*
6 *following:*

7 *(1) A current list of the full name and last known business or*
8 *residence address of each member and of each holder of a*
9 *transferable interest in the worker cooperative company set forth*
10 *in alphabetical order, together with the contribution and the share*
11 *in profits and losses of each member and holder of a transferable*
12 *interest.*

13 *(2) If the worker cooperative company is a manager-managed*
14 *worker cooperative company, a current list of the full name and*
15 *business or residence address of each manager.*

16 *(3) A copy of the articles of organization and all amendments*
17 *thereto, together with any powers of attorney pursuant to which*
18 *the articles of organization or any amendments thereto were*
19 *executed.*

20 *(4) Copies of the worker cooperative company's federal, state,*
21 *and local income tax or information returns and reports, if any,*
22 *for the six most recent fiscal years.*

23 *(5) A copy of the worker cooperative company's operating*
24 *agreement, if in writing, and any amendments thereto, together*
25 *with any powers of attorney pursuant to which any written*
26 *operating agreement or any amendments thereto were executed.*

27 *(6) Copies of the financial statement of the worker cooperative*
28 *company, if any, for the six most recent fiscal years.*

29 *(7) The books and records of the worker cooperative company*
30 *as they relate to the internal affairs of the worker cooperative*
31 *company for at least the current and past four fiscal years.*

32 *(d) Upon request of an assessor, a worker cooperative company*
33 *owning, claiming, possessing, or controlling property in this state*
34 *subject to local assessment shall make available at the worker*
35 *cooperative company's principal office in this state or at the office*
36 *required to be kept pursuant to subdivision (a) or at a place*
37 *mutually acceptable to the assessor and the worker cooperative*
38 *company a true copy of the business records relevant to the*
39 *amount, cost, and value of all property that the worker cooperative*
40 *company owns, claims, possesses, or controls within the county.*

1 17801.14. (a) A worker cooperative company may change its
2 designated office, its principal office, its agent for service of
3 process, the address of its agent for service of process, its mailing
4 address by delivering to the Secretary of State for filing a statement
5 of information as set forth in Section 17802.09.

6 (b) A statement of information is effective when filed by the
7 Secretary of State.

8 17801.15. (a) To resign as an agent for service of process of
9 a worker cooperative company, the agent shall deliver to the
10 Secretary of State for filing a signed and acknowledged statement
11 of resignation containing the worker cooperative company name,
12 the Secretary of State's file number, the name of resigning agent
13 for service of process, and a statement that the agent is resigning.

14 (b) The Secretary of State shall file a statement of resignation
15 delivered under subdivision (a) and mail or otherwise provide or
16 deliver a copy to the designated office of the worker cooperative
17 company.

18 (c) Upon filing of the statement of resignation, the authority of
19 the agent to act in that capacity shall cease.

20 (d) If an individual who has been designated agent for service
21 of process dies or resigns or no longer resides in the state, or if
22 the corporate agent for that purpose resigns, dissolves, withdraws
23 from the state, forfeits its right to transact intrastate business in
24 this state, has its corporate rights, powers, and privileges
25 suspended, or ceases to exist, the worker cooperative company
26 shall promptly file an initial or amended statement of information
27 as set forth in Section 17802.09.

28 17801.16. (a) In addition to Chapter 4 (commencing with
29 Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure,
30 process may be served upon worker cooperative companies as
31 provided in this section.

32 (b) Personal service of a copy of any process against the worker
33 cooperative company by delivery (1) to any individual designated
34 by it as agent, or (2) if the designated agent is a corporation, to
35 any person named in the latest certificate of the corporate agent
36 filed pursuant to Section 1505 at the office of the corporate agent,
37 shall constitute valid service on the worker cooperative company.
38 No change in the address of the agent for service of process or
39 appointment of a new agent for service of process shall be effective

1 *until an amendment to the statement described in Section 17801.14*
2 *is filed.*

3 *(c) If an agent for service of process has resigned and has not*
4 *been replaced or if the designated agent cannot with reasonable*
5 *diligence be found at the address designated for personal delivery*
6 *of the process, and it is shown by affidavit to the satisfaction of*
7 *the court that process against a worker cooperative company*
8 *cannot be served with reasonable diligence upon the designated*
9 *agent by hand in the manner provided in Section 415.10,*
10 *subdivision (a) of Section 415.20, or subdivision (a) of Section*
11 *415.30 of the Code of Civil Procedure, the court may make an*
12 *order that the service shall be made upon a worker cooperative*
13 *company by delivering by hand to the Secretary of State, or to any*
14 *person employed in the Secretary of State's office in the capacity*
15 *of assistant or deputy, one copy of the process for each defendant*
16 *to be served, together with a copy of the order authorizing the*
17 *service. Service in this manner shall be deemed complete on the*
18 *10th day after delivery of the process to the Secretary of State.*

19 *(d) Upon receipt of the copy of process and the fee therefor, the*
20 *Secretary of State shall give notice of the service of the process to*
21 *the worker cooperative company at its principal office, by*
22 *forwarding to that office, by registered mail with request for return*
23 *receipt, the copy of the process.*

24 *(e) The Secretary of State shall keep a record of all process*
25 *served upon the Secretary of State under this division and shall*
26 *record therein the time of service and the action taken by the*
27 *Secretary of State. A certificate under the Secretary of State's*
28 *official seal, certifying to the receipt of process, the giving of notice*
29 *to the worker cooperative company, and the forwarding of the*
30 *process pursuant to this section, shall be competent and prima*
31 *facie evidence of the service of process.*

32 *17801.17. (a) A member may, in a written operating agreement*
33 *or other writing, consent to be subject to the nonexclusive*
34 *jurisdiction of the courts of a specified jurisdiction and the courts*
35 *of this state, or the exclusive jurisdiction of the courts of this state.*

36 *(b) If a member desires to use the arbitration process, that*
37 *member may, in a written operating agreement or other writing,*
38 *consent to be nonexclusively subject to arbitration in a specified*
39 *state or states and this state, or to be exclusively subject to*
40 *arbitration in this state.*

1 (c) *Along with this consent to the jurisdiction of courts or*
2 *arbitration, a member may consent to be served with legal process*
3 *in the manner prescribed in the operating agreement or other*
4 *writing.*

5
6 Article 2. *Formation: Articles of Organization and Other Filings*
7

8 17802.01. (a) *One or more persons may act as organizers to*
9 *form a worker cooperative company by signing and delivering to*
10 *the Secretary of State for filing articles of organization on a form*
11 *prescribed by the Secretary of State.*

12 (b) *The articles of organization shall state all of the following:*

13 (1) *A statement that the purpose of the worker cooperative*
14 *company is to engage in any lawful act or activity for which a*
15 *worker cooperative company may be organized under this division.*

16 (2) *The name of the worker cooperative company, which shall*
17 *comply with Section 17801.08.*

18 (3) *The street address of the initial designated office and the*
19 *mailing address of the worker cooperative company if different*
20 *from the street address of the initial designated office.*

21 (4) *The name and street address of the initial agent for service*
22 *of process of the worker cooperative company who meets the*
23 *qualifications specified in subdivision (c) of Section 17801.13. If*
24 *a corporate agent is designated, only the name of the agent shall*
25 *be set forth.*

26 (5) *If the worker cooperative company is to be*
27 *manager-managed, the articles of organization shall contain a*
28 *statement to that effect.*

29 (6) *If the worker cooperative company is to be managed by only*
30 *one manager, the articles of organization shall contain a statement*
31 *to that effect.*

32 (7) *If the financial rights of the members are unequal, the*
33 *articles of organization shall contain a statement to that effect.*

34 (c) *Subject to subdivision (c) of Section 17801.12, articles of*
35 *organization may also contain any other provision not inconsistent*
36 *with law other than those provisions required by subdivision (b).*

37 (d) *A worker cooperative company is formed when the Secretary*
38 *of State has filed the articles of organization.*

39 (e) *Except in a proceeding by this state to dissolve a worker*
40 *cooperative company, the filing of the articles of organization by*

1 *the Secretary of State is conclusive proof that the organizer*
2 *satisfied all conditions to the formation of a worker cooperative*
3 *company.*

4 *(f) The Secretary of State may cancel the filing of the articles*
5 *of organization if a check or other remittance accepted in payment*
6 *of the filing fee is not paid upon presentation. Upon receiving*
7 *written notification that the item presented for payment has not*
8 *been honored for payment, the Secretary of State shall give a first*
9 *written notice of the applicability of this subdivision to the agent*
10 *for service of process or to the person submitting the instrument.*
11 *Thereafter, if the amount has not been paid by cashier's check or*
12 *equivalent, the Secretary of State shall give a second written notice*
13 *of cancellation and the cancellation shall thereupon be effective.*
14 *The second notice shall be given 20 days or more after the first*
15 *notice, and 90 days or less after the original filing.*

16 *(g) The Secretary of State shall include with the instructional*
17 *materials, provided in conjunction with the form for filing the*
18 *articles of organization under subdivision (a), a notice that filing*
19 *the registration will obligate the worker cooperative company to*
20 *pay an annual tax for that taxable year to the Franchise Tax Board*
21 *pursuant to Section 17941 of the Revenue and Taxation Code. That*
22 *notice shall be updated annually to specify the dollar amount of*
23 *the tax.*

24 *(h) The Secretary of State shall provide on its Internet Web site*
25 *information and sample documents for forming a worker*
26 *cooperative company.*

27 *17802.02. (a) The articles of organization may be amended*
28 *or restated at any time.*

29 *(b) To amend its articles of organization, a worker cooperative*
30 *company shall deliver to the Secretary of State for filing a*
31 *certificate of amendment, on a form prescribed by the Secretary*
32 *of State, stating all of the following:*

33 *(1) The present name of the worker cooperative company.*

34 *(2) The Secretary of State's file number for the worker*
35 *cooperative company.*

36 *(3) The changes the amendment makes to the articles of*
37 *organization as most recently amended or restated.*

38 *(c) To restate its articles of organization, a worker cooperative*
39 *company shall deliver to the Secretary of State for filing a*

1 *restatement, on a form prescribed by the Secretary of State, stating,*
2 *as applicable, the following:*

3 *(1) The present name of the worker cooperative company and*
4 *the Secretary of State's file number for the worker cooperative*
5 *company.*

6 *(2) The changes the restatement makes to the articles of*
7 *organization as most recently amended or restated.*

8 *(d) Subject to subdivision (c) of Section 17801.12 and*
9 *subdivision (c) of Section 17802.05, an amendment to or*
10 *restatement of the articles of organization is effective when filed*
11 *by the Secretary of State and shall be duly executed by at least one*
12 *manager of a manager-managed worker cooperative company or*
13 *at least one member of a member-managed worker cooperative*
14 *company unless a greater number is provided in the articles of*
15 *organization.*

16 *(e) If a member of a member-managed worker cooperative*
17 *company, or a manager of a manager-managed worker cooperative*
18 *company, knows that any information in filed articles of*
19 *organization was inaccurate when the articles were filed or has*
20 *become inaccurate owing to changed circumstances, the member*
21 *or manager shall promptly do the following:*

22 *(1) Cause the articles to be amended.*

23 *(2) If appropriate, deliver to the Secretary of State for filing a*
24 *statement of information under Section 17801.14 or a certificate*
25 *of correction under Section 17802.06.*

26 *(f) A worker cooperative company shall not amend its articles*
27 *of organization pursuant to subdivision (b) or restate its articles*
28 *of organization pursuant to subdivision (c) in order to change its*
29 *designated office, its mailing address, its agent for service of*
30 *process, or the address of its agent for service of process. To*
31 *change that information, the worker cooperative company shall*
32 *deliver to the Secretary of State for filing a statement of information*
33 *under Section 17801.14.*

34 *17802.03. (a) A record delivered to the Secretary of State for*
35 *filing pursuant to this division shall be signed as follows:*

36 *(1) Except as otherwise provided in paragraphs (2) and (3), a*
37 *record signed on behalf of a worker cooperative company shall*
38 *be signed by a person authorized by the worker cooperative*
39 *company.*

1 (2) A worker cooperative company's initial articles of
2 organization shall be signed by at least one person acting as an
3 organizer.

4 (3) A record filed on behalf of a dissolved worker cooperative
5 company that has no members shall be signed by the person
6 winding up the worker cooperative company's activities or a
7 person appointed under Section 17807.04 to wind up those
8 activities.

9 (4) A certificate of cancellation under Section 17807.02 shall
10 be signed by each organizer that signed the initial articles of
11 organization, but a personal representative of a deceased or
12 incompetent organizer may sign in the place of the decedent or
13 incompetent.

14 (b) Any record filed under this division may be signed by an
15 agent.

16 (c) A worker cooperative company may record in the office of
17 the county recorder of any county in this state, and county
18 recorders, on request, shall record a certified copy of the worker
19 cooperative company articles of organization and any exhibit or
20 attachment, or any amendment or correction thereto, that has been
21 filed in the office of the Secretary of State. The recording shall
22 create a conclusive presumption in favor of any bona fide
23 purchaser or encumbrancer for value of the worker cooperative
24 company real property located in the county in which the certified
25 copy has been recorded, of the statements contained therein.

26 (d) If the Secretary of State determines that an instrument
27 submitted for filing or otherwise submitted does not conform to
28 the law and returns it to the person submitting it, the instrument
29 may be resubmitted accompanied by a written opinion of a member
30 of the State Bar of California submitting the instrument or
31 representing the person submitting it, to the effect that the specific
32 provisions of the instrument objected to by the Secretary of State
33 do conform to law and stating the points and authorities upon
34 which the opinion is based. The Secretary of State shall rely, with
35 respect to any disputed point of law, other than the application of
36 Sections 17801.08 and 17801.09, upon that written opinion in
37 determining whether the instrument conforms to law. The date of
38 filing in that case shall be the date the instrument is received on
39 resubmission.

1 17802.04. (a) If a person required by this division to sign a
2 record or deliver a record to the Secretary of State for filing under
3 this division does not do so, any other person that is aggrieved
4 may petition the superior court to order any of the following:

- 5 (1) The person to sign the record.
6 (2) The person to deliver the record to the Secretary of State
7 for filing.
8 (3) The Secretary of State to file the record unsigned.

9 (b) If a petitioner under subdivision (a) is not the worker
10 cooperative company to which the record pertains, the petitioner
11 shall make the worker cooperative company a party to the action.

12 17802.05. (a) A record authorized or required to be delivered
13 to the Secretary of State for filing under this division shall be
14 captioned to describe the record's purpose, be in a medium
15 permitted by the Secretary of State, and be delivered to the
16 Secretary of State. If the filing fees have been paid, unless the
17 Secretary of State determines that a record does not comply with
18 applicable laws, the Secretary of State shall file the record.

19 (b) Upon request and payment of the requisite fee, the Secretary
20 of State shall send to the requester a certified copy of a requested
21 record.

22 (c) Except for original articles of organization and except as
23 otherwise provided in Sections 17801.14 and 17802.06, a record
24 delivered to the Secretary of State for filing under this division
25 may specify a delayed effective date. Subject to Section 17802.06,
26 a record filed by the Secretary of State is effective as follows:

27 (1) If the record does not specify a delayed effective date, on
28 the date the record is filed as evidenced by the Secretary of State's
29 endorsement of the date on the record.

30 (2) If the record specifies a delayed effective date, on the date
31 specified in the record. A delayed effective date specified in the
32 record shall not be more than 90 days after the date the record is
33 filed.

34 (d) In the case of a delayed effective date, the instrument may
35 be prevented from becoming effective by a certificate stating that
36 by appropriate action it has been revoked and is null and void.
37 This certificate shall be executed in the same manner as the
38 original instrument and shall be filed before the delayed effective
39 date.

1 (e) *In the case of a merger agreement or certificate of merger,*
2 *a certificate revoking the earlier filing need only be executed on*
3 *behalf of one of the constituent parties to the merger. If no*
4 *revocation certificate is filed, the instrument becomes effective on*
5 *the date specified.*

6 17802.06. (a) *A worker cooperative company may deliver to*
7 *the Secretary of State for filing a certificate of correction on a*
8 *form prescribed by the Secretary of State to correct a record*
9 *previously delivered by the worker cooperative company to the*
10 *Secretary of State and filed by the Secretary of State, if at the time*
11 *of filing the record contained inaccurate information or was*
12 *defectively signed.*

13 (b) *A certificate of correction under subdivision (a) may not*
14 *state a delayed effective date and shall do all of the following:*

15 (1) *State the present name of the worker cooperative company*
16 *and the Secretary of State's file number.*

17 (2) *Describe the title to the document to be corrected, including*
18 *its filing date.*

19 (3) *Set forth the name of each party to the document to be*
20 *corrected.*

21 (4) *Specify the inaccurate information and the reason it is*
22 *inaccurate or the manner in which the signing was defective.*

23 (5) *Correct the defective signature or inaccurate information.*

24 (c) *When filed by the Secretary of State, a certificate of*
25 *correction under subdivision (a) is effective retroactively as of the*
26 *effective date of the record the certificate corrects, but the*
27 *statement is effective when filed as to persons that previously relied*
28 *on the uncorrected record and would be adversely affected by the*
29 *retroactive effect.*

30 17802.07. (a) *If a record delivered to the Secretary of State*
31 *for filing under this division and filed by the Secretary of State*
32 *contains inaccurate information, a person that suffers a loss by*
33 *reliance on the information may recover damages for the loss from*
34 *the following:*

35 (1) *A person that signed the record, or caused another to sign*
36 *it on the person's behalf, and knew the information to be inaccurate*
37 *at the time the record was signed.*

38 (2) *Subject to subdivision (b), a member of a member-managed*
39 *worker cooperative company or the manager of a*

1 *manager-managed worker cooperative company, if all of the*
2 *following apply:*

3 (A) *The record was delivered for filing on behalf of the worker*
4 *cooperative company.*

5 (B) *The member or manager had notice of the inaccuracy for*
6 *a reasonably sufficient time before the information was relied upon*
7 *so that, before the reliance, the member or manager reasonably*
8 *could have done all of the following:*

9 (i) *Effectuated an amendment under Section 17802.02.*

10 (ii) *Filed a petition under Section 17802.04.*

11 (iii) *Delivered to the Secretary of State for filing a statement of*
12 *information under Section 17801.14 or a certificate of correction*
13 *under Section 17802.06.*

14 (b) *To the extent that the operating agreement of a*
15 *member-managed worker cooperative company expressly relieves*
16 *a member of responsibility for maintaining the accuracy of*
17 *information contained in records delivered on behalf of the worker*
18 *cooperative company to the Secretary of State for filing under this*
19 *division and imposes that responsibility on one or more other*
20 *members, the liability stated in paragraph (2) of subdivision (a)*
21 *applies to those other members and not to the member that the*
22 *operating agreement relieves of the responsibility.*

23 (c) *An individual who signs a record authorized or required to*
24 *be filed under this division affirms under penalty of perjury that*
25 *the information stated in the record is accurate.*

26 17802.09. (a) *A worker cooperative company shall deliver to*
27 *the Secretary of State for filing within 90 days after the filing of*
28 *its original articles of organization and biennially thereafter during*
29 *the applicable filing period, on a form prescribed by the Secretary*
30 *of State, a statement of information containing:*

31 (1) *The name of the worker cooperative company and the*
32 *Secretary of State's file number.*

33 (2) *The name and street address of the agent in this state for*
34 *service of process required to be maintained pursuant to Section*
35 *17801.13. If a corporate agent is designated, only the name of the*
36 *agent shall be set forth.*

37 (3) *The street address of its office required to be maintained*
38 *pursuant to Section 17801.13.*

1 (4) *The mailing address of the worker cooperative company, if*
2 *different from the street address of its office required to be*
3 *maintained pursuant to Section 17801.13.*

4 (5) *The name and complete business or residence addresses of*
5 *any manager or managers and the chief executive officer, if any,*
6 *appointed or elected in accordance with the articles of organization*
7 *or operating agreement or, if no manager has been so elected or*
8 *appointed, the name and business or residence address of each*
9 *member.*

10 (6) *If the worker cooperative company chooses to receive*
11 *renewal notices and any other notifications from the Secretary of*
12 *State by electronic mail instead of by United States mail, the worker*
13 *cooperative company shall include a valid electronic mail address*
14 *for the worker cooperative company, or for the worker cooperative*
15 *company's designee to receive those notices.*

16 (7) *The general type of business that constitutes the principal*
17 *business activity or the worker cooperative company, such as, for*
18 *example, manufacture of aircraft, wholesale liquor distributor, or*
19 *retail department store.*

20 (b) *If there has been no change in the information contained in*
21 *the last filed statement of information of the worker cooperative*
22 *company on file in the office of Secretary of State, the worker*
23 *cooperative company may, in lieu of filing the statement of*
24 *information required by subdivision (a), advise the Secretary of*
25 *State, on a form prescribed by the Secretary of State, that no*
26 *changes in the required information have occurred during the*
27 *applicable filing period.*

28 (c) *For purposes of this section, the applicable filing period for*
29 *a worker cooperative company shall be the calendar month during*
30 *which its original articles of organization was filed and the*
31 *immediately preceding five calendar months. The Secretary of*
32 *State shall provide a notice to each worker cooperative company*
33 *to comply with this section approximately three months prior to*
34 *the close of the applicable filing period. The notice shall state the*
35 *due date for compliance and shall be sent to the last mailing*
36 *address of the worker cooperative company according to the*
37 *records of the Secretary of State, or if none, to the street address*
38 *of the principal office, or, in the case of a domestic worker*
39 *cooperative company, the office required to be maintained pursuant*
40 *to Section 17801.13, or to the last electronic mail address*

1 according to the records of the Secretary of State if the worker
2 cooperative company has elected to receive notices from the
3 Secretary of State by electronic mail. The failure of the worker
4 cooperative company to receive the notice shall not exempt the
5 worker cooperative company from complying with this section.

6 (d) Whenever any of the information required by subdivision
7 (a) changes, other than the name and address of the agent for
8 service of process, the worker cooperative company may file a
9 current statement containing all the information required by
10 subdivision (a). When changing its agent for service of process or
11 when the address of the agent changes, the worker cooperative
12 company shall file a current statement containing all the
13 information required by subdivision (a). Whenever any statement
14 is filed pursuant to this section, that statement supersedes any
15 previously filed statement pursuant to this section, the statement
16 in the original articles of organization, and the statement in any
17 previously filed amended or restated articles of organization that
18 have been filed.

19 (e) If a statement of information delivered to the Secretary of
20 State for filing under this section does not contain the information
21 required by subdivision (a), the Secretary of State shall promptly
22 return the statement of information to the reporting worker
23 cooperative company for correction.

24 (f) The Secretary of State may destroy or otherwise dispose of
25 any statement filed pursuant to this section after it has been
26 superseded by the filing of a new statement.

27 17802.10. An instrument shall be deemed filed, and the date
28 of filing endorsed thereon, upon receipt by the Secretary of State
29 of any instrument accompanied by the fee prescribed in Article 3
30 (commencing with Section 12180) of Chapter 3 of Part 2 of
31 Division 3 of Title 2 of the Government Code. The date of filing
32 shall be the date the instrument is received by the Secretary of
33 State unless the instrument provides that it is to be withheld from
34 filing for a period of time not to exceed 90 days or unless, in the
35 judgment of the Secretary of State, the filing is intended to be
36 coordinated with the filing of some other document that cannot be
37 filed. The Secretary of State shall file a document as of any
38 requested future date not more than 90 days after its receipt,
39 including a Saturday, Sunday, or legal holiday, if that document
40 is received in the office of the Secretary of State at least one

1 *business day prior to the requested date of filing. Upon receipt*
2 *and after filing of any document under this division, the Secretary*
3 *of State may microfilm or reproduce by other techniques any filings*
4 *or documents and destroy the original filing or document. The*
5 *microfilm or other reproduction of any document under this*
6 *section, or corresponding provision under prior law, shall be*
7 *admissible in any court of law.*

8
9 *Article 3. Relations of Members and Managers to Persons*
10 *Dealing with a Worker Cooperative Company*
11

12 *17803.01. (a) Unless the articles of organization indicate the*
13 *worker cooperative company is a manager-managed worker*
14 *cooperative company, every worker-member is an agent of the*
15 *worker cooperative company for the purpose of its business or*
16 *affairs, and the act of any worker-member, including, but not*
17 *limited to, the execution in the name of the worker cooperative*
18 *company of any instrument, for the apparent purpose of carrying*
19 *on in the usual way the business or affairs of the worker*
20 *cooperative company of which that person is a worker-member,*
21 *binds the worker cooperative company in the particular matter,*
22 *unless the worker-member so acting has, in fact, no authority to*
23 *act for the worker cooperative company in the particular matter*
24 *and the person with whom the worker-member is dealing has actual*
25 *knowledge of the fact that the worker-member has no such*
26 *authority.*

27 *(b) If the articles of organization indicate that the worker*
28 *cooperative company is a manager-managed worker cooperative*
29 *company, each of the following applies:*

30 *(1) No member acting solely in the capacity of a member is an*
31 *agent of the worker cooperative company nor can any member*
32 *bind or execute any instrument on behalf of the worker cooperative*
33 *company.*

34 *(2) Every manager is an agent of the worker cooperative*
35 *company for the purpose of its business or affairs, and the act of*
36 *any manager, including, but not limited to, the execution in the*
37 *name of the worker cooperative company of any instrument for*
38 *apparently carrying on in the usual way the business or affairs of*
39 *the worker cooperative company of which the person is a manager,*
40 *binds the worker cooperative company, unless the manager so*

1 acting has, in fact, no authority to act for the worker cooperative
2 company in the particular matter and the person with whom the
3 manager is dealing has actual knowledge of the fact that the
4 manager has no such authority.

5 (c) No act of a manager or member in contravention of a
6 restriction on authority shall bind the worker cooperative company
7 to persons having actual knowledge of the restriction.

8 (d) Notwithstanding the provisions of subdivision (c), any note,
9 mortgage, evidence of indebtedness, contract, certificate, statement,
10 conveyance, or other instrument in writing, and any assignment
11 or endorsement thereof, executed or entered into between any
12 worker cooperative company and any other person, when signed
13 by at least two managers, or by one manager in the case of a
14 worker cooperative company whose articles of organization state
15 that it is managed by only one manager, is not invalidated as to
16 the worker cooperative company by any lack of authority of the
17 signing managers or manager in the absence of actual knowledge
18 on the part of the other person that the signing managers or
19 manager had no authority to execute the same.

20 17803.04. (a) All of the following apply to debts, obligations,
21 or other liabilities of a worker cooperative company, whether
22 arising in contract, tort, or otherwise:

23 (1) They are solely the debts, obligations, or other liabilities of
24 the worker cooperative company to which the debts, obligations,
25 or other liabilities relate.

26 (2) They do not become the debts, obligations, or other liabilities
27 of a member or manager solely by reason of the member acting
28 as a member or manager acting as a manager for the worker
29 cooperative company.

30 (b) A member of a worker cooperative company shall be subject
31 to liability under the common law governing alter ego liability,
32 and shall also be personally liable under a judgment of a court or
33 for any debt, obligation, or liability of the worker cooperative
34 company, whether that liability or obligation arises in contract,
35 tort, or otherwise, under the same or similar circumstances and
36 to the same extent as a shareholder of a corporation may be
37 personally liable for any debt, obligation, or liability of the
38 corporation; except that the failure to hold meetings of members
39 or managers or the failure to observe formalities pertaining to the
40 calling or conduct of meetings shall not be considered a factor

1 *tending to establish that a member or the members have alter ego*
2 *or personal liability for any debt, obligation, or liability of the*
3 *worker cooperative company where the articles of organization*
4 *or operating agreement do not expressly require the holding of*
5 *meetings of members or managers.*

6 *(c) Nothing in this section shall be construed to affect the*
7 *liability of a member of a worker cooperative company to third*
8 *parties for the member's participation in tortious conduct, or*
9 *pursuant to the terms of a written guarantee or other contractual*
10 *obligation entered into by the member, other than an operating*
11 *agreement.*

12 *(d) A worker cooperative company shall carry insurance or*
13 *provide an undertaking to the same extent and in the same amount*
14 *as is required by any law, rule, or regulation of this state that*
15 *would be applicable to the worker cooperative company were it*
16 *a corporation organized and existing or duly qualified for the*
17 *transaction of intrastate business under the General Corporation*
18 *Law.*

19 *(e) Notwithstanding subdivision (a), a member of a worker*
20 *cooperative company may agree to be obligated personally for*
21 *any or all of the debts, obligations, and liabilities of the worker*
22 *cooperative company as long as the agreement to be so obligated*
23 *is set forth in the articles of organization or in a written operating*
24 *agreement that specifically references this subdivision.*

25
26 *Article 4. Relations of Members to Each Other and to the*
27 *Worker Cooperative Company*
28

29 *17804.01. (a) A worker cooperative company shall consist of*
30 *at least three worker-members, but it is permitted to have fewer*
31 *than three worker-members for a maximum of 12 months during*
32 *any 36-month period. If, at the expiration of that time period, the*
33 *worker cooperative company has fewer than three*
34 *worker-members, the Attorney General may, on application to the*
35 *Secretary of State, on his or her own motion, or upon application*
36 *of a worker-member, suspend the company. The company shall be*
37 *reinstated upon showing that it has three or more worker-members.*

38 *(b) If a worker cooperative company is to have more than one*
39 *member upon formation, those persons become members as agreed*
40 *by the persons before the formation of the worker cooperative*

1 company. The organizer acts on behalf of the persons in forming
2 the worker cooperative company and may be, but need not be, one
3 of the persons.

4 (c) After formation of a worker cooperative company, a person
5 becomes a member as follows:

6 (1) As provided in the operating agreement.

7 (2) As the result of a transaction effective under Article 9
8 (commencing with Section 17809.01).

9 (3) With the consent of all the members.

10 (4) If, within 90 consecutive days after the worker cooperative
11 company ceases to have any members, the last person to have been
12 a member, or the legal representative of that person, designates
13 a person to become a member, and the designated person consents
14 to become a member.

15 (d) A person shall not become a member without acquiring a
16 transferable interest and without making, or being obligated to
17 make, a contribution to the worker cooperative company unless
18 the articles or the operating agreement permit.

19 17804.02. (a) The worker cooperative company's members
20 shall include a class of worker-members, to which the following
21 rules apply:

22 (1) Only workers in the worker cooperative company are eligible
23 for membership in the worker-member class.

24 (2) Qualification requirements and the process for accepting
25 and terminating all members shall be reflected in the worker
26 cooperative company's articles or operating agreement. Upon
27 resignation, termination, or death, the worker's membership in
28 the cooperative shall immediately cease.

29 (3) Worker-membership shall be available to all workers in a
30 worker cooperative company, excluding temporary workers.

31 (4) The worker cooperative company may have a candidacy
32 period for all workers on the track to worker-membership, which
33 shall not exceed three years.

34 (5) A decision to terminate a worker-member requires a
35 minimum of 51-percent vote of the quorum of the worker-member
36 class or a delegated decisionmaking body, as provided in the
37 worker cooperative company's articles or operating agreement.
38 If the decision to terminate a worker-member was made by a group
39 comprising less than the entire worker-member class, the
40 terminated worker-member has the right to appeal the decision to

1 *the entire worker-member class, or a delegated decisionmaking*
2 *body. Upon termination, resignation, or death, a worker-member's*
3 *account shall be returned to the worker-member in the manner*
4 *prescribed by the articles or operating agreement. If a member is*
5 *terminated by expulsion, the amount a member receives upon*
6 *termination shall be no less than the members' capital*
7 *contributions and allocated patronage distributions. If no manner*
8 *is prescribed, the account shall be converted to debt and repaid*
9 *over a maximum of five years with interest accruing at the discount*
10 *rate, as set by the Federal Reserve Bank of San Francisco.*

11 *(b) In a typical year, at least a simple majority of all the workers*
12 *in a worker cooperative company shall be worker-members, and*
13 *the majority of the labor or hours shall be contributed by the*
14 *worker-members.*

15 *(c) (1) Except as provided in paragraph (2), the activities and*
16 *affairs of the worker cooperative company shall be conducted,*
17 *and all company powers shall be exercised by or under the ultimate*
18 *direction of the worker-member class, including representatives*
19 *elected pursuant to subdivision (d). Subject to the provisions of*
20 *paragraph (2), at no point shall other classes of members created*
21 *in the articles or operating agreement have greater voting power,*
22 *collectively, than the worker-member class when voting as a*
23 *combined membership is called for, except for the election of*
24 *representatives in accordance with subdivision (d).*

25 *(2) The worker-member class may grant other member classes*
26 *voting power over decisions that are outside the ordinary course*
27 *of the cooperative's activities or that affect the membership,*
28 *ownership, or voting interests of other classes in a manner that is*
29 *different from or disproportionate to their effect on the interests*
30 *of the worker-member class.*

31 *(d) The worker-member class may delegate authority to a*
32 *manager, managers, board of managers, or other elected*
33 *decisionmaking body or individuals (the representatives). The*
34 *worker-member class may allocate the power to elect the*
35 *representatives among the various classes of members, provided,*
36 *however, that at least the majority of those representatives shall*
37 *be elected by, and subject to removal by, the worker-member class.*

38 *17804.03. (a) A contribution may consist of tangible or*
39 *intangible property or other benefit to a worker cooperative*
40 *company, including money, services performed, promissory notes,*

1 *other agreements to contribute money or property, and contracts*
2 *for services to be performed.*

3 *(b) A person's obligation to make a contribution to a worker*
4 *cooperative company is not excused by the person's death,*
5 *disability, or other inability to perform personally. If a person*
6 *does not make a required contribution, the person or the person's*
7 *estate is obligated to contribute money equal to the value of the*
8 *part of the contribution that has not been made, at the option of*
9 *the worker cooperative company.*

10 *(c) The obligation of a member to make a contribution to a*
11 *worker cooperative company may be compromised only by consent*
12 *of all of the worker-members. A conditional obligation of a member*
13 *to make a contribution to a worker cooperative company shall not*
14 *be enforced unless the conditions of the obligation have been*
15 *satisfied or waived as to or by that member. Conditional*
16 *obligations include contributions payable upon a discretionary*
17 *call of a worker cooperative company before the time the call*
18 *occurs.*

19 *(d) A creditor of a worker cooperative company that extends*
20 *credit or otherwise acts in reliance on an obligation described in*
21 *subdivision (b) may enforce the obligation.*

22 *(e) Nothing in this section shall be construed to affect the rights*
23 *of third-party creditors of the worker cooperative company to seek*
24 *equitable remedies or any rights existing under the Uniform*
25 *Fraudulent Transfer Act (Chapter 1 (commencing with Section*
26 *3439) of Title 2 of Part 2 of Division 4 of the Civil Code).*

27 *17804.04. (a) Unless the articles or operating agreement*
28 *otherwise provide and subject to this section, the worker-member*
29 *class, or its delegated decisionmaking body, may authorize, and*
30 *the worker cooperative company may make, distributions to*
31 *members.*

32 *(b) (1) The articles or operating agreement may provide for*
33 *allocating profits of a worker cooperative company among*
34 *members, among persons that are not members but conduct*
35 *business with the cooperative, to an unallocated account, or to*
36 *any combination thereof. Unless the articles or operating*
37 *agreement otherwise provide, losses of the cooperative shall be*
38 *allocated in the same proportion as profits.*

1 (2) *Unless the articles or operating agreement otherwise*
2 *provide, all profits and losses of a worker cooperative company*
3 *shall be allocated to patron members.*

4 (3) *If a worker cooperative company has nonpatron members,*
5 *the articles or operating agreement shall not allow the allocation*
6 *of profits to nonpatron members to exceed 49 percent of profits in*
7 *any given fiscal year, and profit allocations to nonpatron members*
8 *may not exceed the limitations of subdivision (d). For purposes of*
9 *this section, the following rules apply:*

10 (A) *Amounts paid or due on contracts for the delivery to the*
11 *worker cooperative company by patron members of products,*
12 *goods, or services shall not be considered to be profit allocations*
13 *to patron members.*

14 (B) *Amounts paid, due, or allocated to nonpatron members as*
15 *a stated fixed return on equity are not considered amounts*
16 *allocated to investor members.*

17 (c) (1) *Unless prohibited by the articles or operating agreement,*
18 *in determining the profits for allocation under subdivisions (d) to*
19 *(g), inclusive, the worker-member class, or its delegated*
20 *decisionmaking body, may first deduct and set aside a part of the*
21 *profits to create or accumulate the following:*

22 (A) *An unallocated account.*

23 (B) *Reasonable capital reserves for specific purposes, including*
24 *expansion and replacement of capital assets; education, training,*
25 *and cooperative development; creation and distribution of*
26 *information concerning principles of cooperation; and community*
27 *responsibility.*

28 (C) *An indivisible reserves account that is prohibited from being*
29 *distributed to the members. The cooperative may only distribute*
30 *or allocate nonpatronage-sourced income to the indivisible*
31 *reserves account. Funds in the indivisible reserves account shall,*
32 *in a manner determined by the operating agreement, the*
33 *worker-member class, or its delegate, be used as capital for the*
34 *cooperative. Upon dissolution, the indivisible reserves account*
35 *shall be allocated to an International Co-operative*
36 *Alliance-approved national federation or a designated regional*
37 *body in this state.*

38 (2) *Subject to subdivisions (d) to (g), inclusive, and the articles*
39 *or operating agreement, the worker-member class, or its delegate,*
40 *shall allocate the amount remaining after any deduction or setting*

1 *aside of profits for capital reserves under paragraph (1) to the*
2 *following:*

3 *(A) Patron members, in the ratio of each member's patronage*
4 *to the total patronage of all patron members during the period for*
5 *which the allocations are to be made.*

6 *(B) Nonpatron members, according to the terms of their*
7 *membership class.*

8 *(3) For purposes of allocation of profits and losses or specific*
9 *items of profits or losses of a cooperative to members, the articles*
10 *or operating agreement may establish allocation units or methods*
11 *based on separate classes of patron and nonpatron members.*

12 *(d) Any distributions made by a worker cooperative company*
13 *before its dissolution and winding up shall be among the members*
14 *in accordance with the articles or operating agreement, provided*
15 *that at least 51 percent of the distributions shall be made to the*
16 *patron members on the basis of value of patronage transactions.*
17 *If the articles or the operating agreement does not otherwise*
18 *provide, all distributions shall be on the basis of the value, as*
19 *stated in the required records when the worker cooperative*
20 *company decides to make the distribution, of patronage that the*
21 *worker cooperative company has received from each patron*
22 *member, except to the extent necessary to comply with any transfer*
23 *effective under Section 17805.02 and any charging order in effect*
24 *under Section 17805.03.*

25 *(e) A person has a right to a distribution before the dissolution*
26 *and winding up of a worker cooperative company only if the worker*
27 *cooperative company decides to make an interim distribution.*
28 *Unless the articles of organization or written operating agreement*
29 *provides otherwise, a person's dissociation does not entitle the*
30 *person to a distribution, and, beginning on the date of dissociation,*
31 *the dissociated person shall have only the right of a transferee of*
32 *a transferable interest with respect to that person's interest in the*
33 *worker cooperative company, and then only with respect to*
34 *distributions, if any, to which a transferee is entitled under the*
35 *operating agreement. If the dissociation is in violation of the*
36 *operating agreement, the worker cooperative company shall have*
37 *the right to offset any damages for the breach of the operating*
38 *agreement from the amounts, if any, otherwise distributable to the*
39 *dissociated person with respect to that person's interest in the*
40 *worker cooperative company.*

1 (f) (1) Unless the articles or operating agreement otherwise
2 provide, distributions to members may be made in any form,
3 including money, capital credits, allocated patronage equities,
4 revolving fund certificates, and the worker cooperative company's
5 own or other securities.

6 (2) A person does not have a right to demand or receive a
7 distribution from a worker cooperative company in any form other
8 than money. A worker cooperative company may distribute an
9 asset in kind if each part of the asset is fungible with each other
10 part and each person receives a percentage of the asset equal in
11 value to the person's share of distributions.

12 (g) If a member or transferee becomes entitled to receive a
13 distribution, the member or transferee has the status of, and is
14 entitled to all remedies available to, a creditor of the worker
15 cooperative company with respect to the distribution.

16 17804.05. (a) A worker cooperative company shall not make
17 a distribution if after the distribution either of the following
18 applies:

19 (1) The worker cooperative company would not be able to pay
20 its debts as they become due in the ordinary course of the worker
21 cooperative company's activities.

22 (2) The worker cooperative company's total assets would be
23 less than the sum of its total liabilities plus the amount that would
24 be needed, if the worker cooperative company were to be dissolved,
25 wound up, and terminated at the time of the distribution, to satisfy
26 the preferential rights upon dissolution, winding up, and
27 termination of members whose preferential rights are superior to
28 those of persons receiving the distribution.

29 (b) A worker cooperative company may base a determination
30 that a distribution is not prohibited under subdivision (a) on
31 financial statements prepared on the basis of accounting practices
32 and principles that are reasonable in the circumstances or on a
33 fair valuation or other method that is reasonable under the
34 circumstances.

35 (c) Except as otherwise provided in subdivision (f), the effect
36 of a distribution under subdivision (a) is measured as follows:

37 (1) In the case of a distribution by purchase, redemption, or
38 other acquisition of a transferable interest in the worker
39 cooperative company, as of the date money or other property is
40 transferred or debt incurred by the worker cooperative company.

1 (2) *In all other cases, as of the date the distribution is*
2 *authorized, if the payment occurs within 120 days after that date,*
3 *or the payment is made, if the payment occurs more than 120 days*
4 *after the distribution is authorized.*

5 (d) *A worker cooperative company's indebtedness to a member*
6 *incurred by reason of a distribution made in accordance with this*
7 *section is at parity with the worker cooperative company's*
8 *indebtedness to its general, unsecured creditors.*

9 (e) *A worker cooperative company's indebtedness, including*
10 *indebtedness issued in connection with or as part of a distribution,*
11 *is not a liability for purposes of subdivision (a) if the terms of the*
12 *indebtedness provide that payment of principal and interest are*
13 *made only to the extent that a distribution could be made to*
14 *members under this section.*

15 (f) *If indebtedness is issued as a distribution, each payment of*
16 *principal or interest on the indebtedness is treated as a distribution,*
17 *the effect of which is measured on the date the payment is made.*

18 (g) *In subdivision (f) of Section 17801.02, "distribution" does*
19 *not include amounts constituting reasonable compensation for*
20 *present or past services or reasonable payments made in the*
21 *ordinary course of business under a bona fide retirement plan or*
22 *other benefits program.*

23 17804.06. (a) *Except as otherwise provided in subdivision (b),*
24 *if a member of a member-managed worker cooperative company*
25 *or manager of a manager-managed worker cooperative company*
26 *consents to a distribution made in violation of Section 17804.05,*
27 *the member or manager is personally liable to the worker*
28 *cooperative company for the amount of the distribution that*
29 *exceeds the amount that could have been distributed without the*
30 *violation of Section 17804.05.*

31 (b) *To the extent the operating agreement of a member-managed*
32 *worker cooperative company expressly relieves a member of the*
33 *authority and responsibility to consent to distributions and imposes*
34 *that authority and responsibility on one or more other members,*
35 *the liability stated in subdivision (a) applies to the other members*
36 *and not the member that the operating agreement relieves of*
37 *authority and responsibility.*

38 (c) *A person that receives a distribution knowing that the*
39 *distribution to that person was made in violation of Section*
40 *17804.05 is personally liable to the worker cooperative company*

1 *but only to the extent that the distribution received by the person*
2 *exceeded the amount that could have been properly paid under*
3 *Section 17804.05.*

4 *(d) A person against which an action is commenced because*
5 *the person is liable under subdivision (a) may do all of the*
6 *following:*

7 *(1) Implead any other person that is subject to liability under*
8 *subdivision (a) and seek to compel contribution from the person.*

9 *(2) Implead any person that received a distribution in violation*
10 *of subdivision (c) and seek to compel contribution from the person*
11 *in the amount the person received in violation of subdivision (c).*

12 *(e) An action under this section is barred if not commenced*
13 *within four years after the distribution.*

14 *17804.07. (a) A worker cooperative company is a*
15 *member-managed worker cooperative company unless the articles*
16 *of organization and the operating agreement do either of the*
17 *following:*

18 *(1) Expressly provide that:*

19 *(A) The worker cooperative company is or will be*
20 *“manager-managed.”*

21 *(B) The worker cooperative company is or will be “managed*
22 *by managers.”*

23 *(C) Management of the worker cooperative company is or will*
24 *be “vested in managers.”*

25 *(2) Include words of similar import.*

26 *(b) In a member-managed worker cooperative company, the*
27 *following rules apply:*

28 *(1) The management and conduct of the worker cooperative*
29 *company are vested in the worker-members, unless provided*
30 *otherwise in the articles or operating agreement.*

31 *(2) Except as provided in subdivision (r), each worker-member*
32 *has equal rights in the management and conduct of the worker*
33 *cooperative company’s activities including equal voting rights.*

34 *(3) A difference arising among members as to a matter in the*
35 *ordinary course of the activities of the worker cooperative company*
36 *shall be decided by a majority of the worker-members of the worker*
37 *cooperative company which the difference among the members*
38 *has arisen.*

39 *(4) An act outside the ordinary course of the activities of the*
40 *worker cooperative company may be undertaken only with the*

1 consent of two-thirds of the worker-member class, or if the articles
2 or operating agreement permit other classes voting rights on a
3 decision subject to this paragraph, two-thirds of the members
4 eligible to vote.

5 (c) In a manager-managed worker cooperative company, the
6 following rules apply:

7 (1) Except as otherwise expressly provided in this division, any
8 matter relating to the activities of the worker cooperative company
9 is decided exclusively by the managers.

10 (2) Each manager has equal rights in the management and
11 conduct of the activities of the worker cooperative company.

12 (3) A difference arising among managers as to a matter in the
13 ordinary course of the activities of the worker cooperative company
14 may be decided by a majority of the managers of the worker
15 cooperative company.

16 (4) Subject to subdivision (r), the consent of two-thirds of the
17 worker-member class of the worker cooperative company is
18 required to do any of the following:

19 (A) Sell, lease, exchange, or otherwise dispose of all, or
20 substantially all, of the worker cooperative company's property,
21 with or without the goodwill, outside the ordinary course of the
22 worker cooperative company's activities.

23 (B) Approve a merger or conversion under Article 9
24 (commencing with Section 17809.01).

25 (C) Undertake any other act outside the ordinary course of the
26 worker cooperative company's activities.

27 (D) Amend the operating agreement.

28 (5) A manager may be chosen at any time by the consent of a
29 majority of the worker-members and remains a manager until a
30 successor has been chosen, unless the manager at an earlier time
31 resigns, is removed, or dies, or, in the case of a manager that is
32 not an individual, terminates. A manager may be removed at any
33 time by the consent of a majority of the worker-members without
34 notice or cause.

35 (6) A person need not be a member to be a manager, but the
36 dissociation of a member that is also a manager removes the
37 person as a manager. If a person that is both a manager and a
38 member ceases to be a manager, that cessation does not by itself
39 dissociate the person as a member.

1 (7) A person's ceasing to be a manager does not discharge any
2 debt, obligation, or other liability to the worker cooperative
3 company or members which the person incurred while a manager.

4 (d) The dissolution of a worker cooperative company does not
5 affect the applicability of this section. However, a person that
6 wrongfully causes dissolution of the worker cooperative company
7 loses the right to participate in management as a member and a
8 manager.

9 (e) This division does not entitle a member to remuneration for
10 services performed for a member-managed worker cooperative
11 company, except for reasonable compensation for services
12 rendered in winding up the activities of a worker cooperative
13 company.

14 (f) (1) A worker cooperative company shall hold an annual
15 membership meeting and may hold any other meetings as
16 frequently as decided by the worker-member class and reflected
17 in the articles or operating agreement.

18 (2) Meetings of members may be held at any place, by electronic
19 video screen communication or by electronic transmission by and
20 to the worker cooperative company pursuant to paragraphs (1)
21 and (2) of subdivision (i) of Section 17801.02, either within or
22 without this state, selected by the person or persons calling the
23 meeting or as may be stated in or fixed in accordance with the
24 articles of organization or a written operating agreement. If no
25 other place is stated or so fixed, all meetings shall be held at the
26 principal office of the worker cooperative company. Unless
27 prohibited by the articles of organization of the worker cooperative
28 company, if authorized by the operating agreement, members not
29 physically present in person or by proxy at a meeting of members
30 may, by electronic transmission by and to the worker cooperative
31 company pursuant to paragraphs (1) and (2) of subdivision (i) of
32 Section 17801.02 or by electronic video screen communication,
33 participate in a meeting of members, be deemed present in person
34 or by proxy, and vote at a meeting of members whether that
35 meeting is to be held at a designated place or in whole or in part
36 by means of electronic transmission by and to the worker
37 cooperative company or by electronic video screen communication,
38 in accordance with subdivision (l).

1 (g) A meeting of the members may be called by any manager
2 or by any worker member unless the articles or operating
3 agreement provide otherwise.

4 (h) (1) Whenever worker-members are required or permitted
5 to take any action at a meeting, a written notice of the meeting
6 shall be given not less than 48 hours nor more than 60 days before
7 the date of the meeting to each member entitled to vote at the
8 meeting. Whenever nonworker members are required or permitted
9 to take any action at a meeting, a written notice of the meeting
10 shall be given not less than 10 days nor more than 60 days before
11 the date of the meeting to each member entitled to vote at the
12 meeting. The notice shall state the place, date, and hour of the
13 meeting, the means of electronic transmission by and to the worker
14 cooperative company or electronic video screen communication,
15 if any, and the general nature of the business to be transacted. No
16 other business may be transacted at that meeting.

17 (2) Any report or any notice of a members' meeting shall be
18 given personally, by electronic transmission by the worker
19 cooperative company, or by mail or other means of written
20 communication, addressed to the member at the address of the
21 member appearing on the books of the worker cooperative
22 company or given by the member to the worker cooperative
23 company for the purpose of notice, or, if no address appears or is
24 given, at the place where the principal office of the worker
25 cooperative company is located or by publication at least once in
26 a newspaper of general circulation in the county in which the
27 principal office is located. The notice or report shall be deemed
28 to have been given at the time when delivered personally, delivered
29 by electronic transmission by the worker cooperative company,
30 deposited in the mail, or sent by other means of written
31 communication. An affidavit of mailing or delivered by electronic
32 transmission by the worker cooperative company of any notice or
33 report in accordance with this article, executed by a manager,
34 shall be prima facie evidence of the giving of the notice or report.

35 (3) If any notice or report addressed to the member at the
36 address of the member appearing on the books of the worker
37 cooperative company is returned to the worker cooperative
38 company by the United States Postal Service marked to indicate
39 that the United States Postal Service is unable to deliver the notice
40 or report to the member at the address, all future notices or reports

1 shall be deemed to have been duly given without further mailing
2 if they are available for the member at the principal office of the
3 worker cooperative company for a period of one year from the
4 date of the giving of the notice or report to all other members.

5 (4) Notice given by electronic transmission by the worker
6 cooperative company under this subdivision shall be valid only if
7 it complies with paragraph (1) of subdivision (i) of Section
8 17801.02.

9 Notwithstanding this condition, notice shall not be given by
10 electronic transmission by the worker cooperative company under
11 this subdivision after either of the following has occurred:

12 (A) The worker cooperative company is unable to deliver two
13 consecutive notices to the member by that means.

14 (B) The inability to so deliver the notices to the member becomes
15 known to the secretary, any assistant secretary, the transfer agent,
16 or any other person responsible for the giving of the notice.

17 (5) Upon written request to a manager by any person entitled
18 to call a meeting of members, the manager shall immediately cause
19 notice to be given to the members entitled to vote that a meeting
20 will be held at a time requested by the person calling the meeting,
21 not less than 48 hours nor more than 60 days after the receipt of
22 the request if the meeting involves only the worker-member class
23 or not less than 10 days nor more than 60 days after the receipt
24 of the request if the meeting involves classes other than the
25 worker-member class. If the notice is not given within 20 days
26 after receipt of the request, the person entitled to call the meeting
27 may give the notice or, upon the application of that person, the
28 superior court of the county in which the principal office of the
29 worker cooperative company is located, or if the principal office
30 is not in this state, the county in which the worker cooperative
31 company's address in this state is located, shall summarily order
32 the giving of the notice, after notice to the worker cooperative
33 company affording it an opportunity to be heard. The procedure
34 provided in subdivision (c) of Section 305 shall apply to the
35 application. The court may issue any order as may be appropriate,
36 including, without limitation, an order designating the time and
37 place of the meeting, the record date for determination of members
38 entitled to vote, and the form of notice.

39 (i) When a members' meeting is adjourned to another time or
40 place, unless the articles of organization or a written operating

1 agreement otherwise require and except as provided in this
2 subdivision, notice need not be given of the adjourned meeting if
3 the time and place thereof or the means of electronic transmission
4 by and to the worker cooperative company or electronic video
5 screen communication, if any, are announced at the meeting at
6 which the adjournment is taken. At the adjourned meeting, the
7 worker cooperative company may transact any business that may
8 have been transacted at the original meeting. If the adjournment
9 is for more than 45 days, or if after the adjournment a new record
10 date is fixed for the adjourned meeting, a notice of the adjourned
11 meeting shall be given to each member of record entitled to vote
12 at the meeting.

13 (j) The actions taken at any meeting of members, however called
14 and noticed, and wherever held, have the same validity as if taken
15 at a meeting duly held after regular call and notice, if a quorum
16 is present either in person or by proxy, and if, either before or
17 after the meeting, each of the members entitled to vote, not present
18 in person or by proxy, provides a waiver of notice or consents to
19 the holding of the meeting or approves the minutes of the meeting
20 in writing. All waivers, consents, and approvals shall be filed with
21 the worker cooperative company records or made a part of the
22 minutes of the meeting after conversion to the form in which those
23 records or minutes are kept. Attendance of a person at a meeting
24 shall constitute a waiver of notice of the meeting, except when the
25 person objects, at the beginning of the meeting, to the transaction
26 of any business because the meeting is not lawfully called or
27 convened. Attendance at a meeting is not a waiver of any right to
28 object to the consideration of matters required by this division to
29 be included in the notice but not so included, if the objection is
30 expressly made at the meeting. Neither the business to be
31 transacted nor the purpose of any meeting of members need be
32 specified in any written waiver of notice, unless otherwise provided
33 in the articles of organization or operating agreement, except as
34 provided in subdivision (l).

35 (k) Members may participate in a meeting of the worker
36 cooperative company through the use of conference telephones or
37 electronic video screen communication, as long as all members
38 participating in the meeting can hear one another, or by electronic
39 transmission by and to the worker cooperative company pursuant
40 to paragraphs (1) and (2) of subdivision (i) of Section 17801.02.

1 *Participation in a meeting pursuant to this provision constitutes*
2 *presence in person at that meeting.*

3 *(l) Any action approved at a meeting, other than by unanimous*
4 *approval of those entitled to vote, shall be valid only if the general*
5 *nature of the proposal so approved was stated in the notice of*
6 *meeting or in any written waiver of notice.*

7 *(m) (1) At least 20 percent of the worker-members represented*
8 *in person or by proxy shall constitute a quorum at a meeting of*
9 *worker-members, unless otherwise provided in the articles or*
10 *operating agreement. If a worker cooperative company is*
11 *authorized to conduct a meeting with a quorum of less than 51*
12 *percent of the worker-members, matters that may be voted upon*
13 *at such meeting shall be listed in the notice of the meeting. At least*
14 *20 percent of all members represented in person or by proxy shall*
15 *constitute a quorum at a meeting of all of the members, unless*
16 *otherwise provided in the articles or operating agreement. If a*
17 *worker cooperative company is authorized to conduct a meeting*
18 *with a quorum of less than 51 percent of the entire membership,*
19 *matters that may be voted upon at the meeting shall be listed in*
20 *the notice of the meeting.*

21 *(2) The members present at a duly called or held meeting at*
22 *which a quorum is present may continue to transact business until*
23 *adjournment, notwithstanding the loss of a quorum, if any action*
24 *taken after loss of a quorum, other than adjournment, is approved*
25 *by the requisite percentage of interests of members specified in*
26 *this division or in the articles of organization or a written operating*
27 *agreement.*

28 *(3) In the absence of a quorum, any meeting of members may*
29 *be adjourned from time to time by the vote of a majority of the*
30 *interests represented either in person or by proxy, but no other*
31 *business may be transacted, except as provided in paragraph (2).*

32 *(n) (1) Any action that may be taken at any meeting of the*
33 *members may be taken without a meeting if a consent in writing,*
34 *setting forth the action so taken, is signed and delivered to the*
35 *worker cooperative company within 60 days of the record date for*
36 *that action by members having not less than the minimum number*
37 *of votes that would be necessary to authorize or take that action*
38 *at a meeting at which all members entitled to vote thereon were*
39 *present and voted.*

1 (2) Unless the consents of all members entitled to vote have
2 been solicited in writing, (A) notice of any member approval of an
3 amendment to the articles of organization or operating agreement,
4 a dissolution of the worker cooperative company as provided in
5 Section 17807.01, or a merger of the worker cooperative company
6 as provided in Section 17809.10, without a meeting by less than
7 unanimous written consent shall be given at least 10 days before
8 the consummation of the action authorized by the approval, and
9 (B) prompt notice shall be given of the taking of any other action
10 approved by members without a meeting by less than unanimous
11 written consent, to those members entitled to vote who have not
12 consented in writing.

13 (3) Any member giving a written consent, or the member's
14 proxyholder, may revoke the consent personally or by proxy by a
15 writing received by the worker cooperative company prior to the
16 time that written consents of members having the minimum number
17 of votes that would be required to authorize the proposed action
18 have been filed with the worker cooperative company, but may not
19 do so thereafter. This revocation is effective upon its receipt at the
20 office of the worker cooperative company required to be
21 maintained pursuant to Section 17801.13.

22 (o) The use of proxies in connection with this section shall be
23 governed in the same manner as in the case of corporations formed
24 under the General Corporation Law, Division 1 (commencing with
25 Section 100) of Title 1.

26 (p) In order that the worker cooperative company may determine
27 the members of record entitled to notices of any meeting or to vote,
28 or entitled to receive any distribution or to exercise any rights in
29 respect of any other lawful action, a manager, or members
30 representing more than 10 percent of the interests of members,
31 may fix, in advance, a record date, that is not more than 60 days
32 nor less than 10 days prior to the date of the meeting and not more
33 than 60 days prior to any other action. If no record date is fixed
34 the following shall apply:

35 (1) The record date for determining members entitled to notice
36 of or to vote at a meeting of members shall be at the close of
37 business on the business day next preceding the day on which
38 notice is given or, if notice is waived, at the close of business on
39 the business day next preceding the day on which the meeting is
40 held.

1 (2) *The record date for determining members entitled to give*
2 *consent to worker cooperative company action in writing without*
3 *a meeting shall be the day on which the first written consent is*
4 *given.*

5 (3) *The record date for determining members for any other*
6 *purpose shall be at the close of business on the day on which the*
7 *managers adopt the resolution relating thereto, or the 60th day*
8 *prior to the date of the other action, whichever is later.*

9 (4) *The determination of members of record entitled to notice*
10 *of or to vote at a meeting of members shall apply to any*
11 *adjournment of the meeting unless a manager or the members who*
12 *called the meeting fix a new record date for the adjourned meeting,*
13 *but the manager or the members who called the meeting shall fix*
14 *a new record date if the meeting is adjourned for more than 45*
15 *days from the date set for the original meeting.*

16 (q) *A meeting of the members may be conducted, in whole or*
17 *in part, by electronic transmission by and to the worker cooperative*
18 *company or by electronic video screen communication if both of*
19 *the following requirements are met:*

20 (1) *The worker cooperative company implements reasonable*
21 *measures to provide members, in person or by proxy, a reasonable*
22 *opportunity to participate in the meeting and to vote on matters*
23 *submitted to the members, including an opportunity to read or*
24 *hear the proceedings of the meeting substantially concurrently*
25 *with those proceedings.*

26 (2) *When any member votes or takes other action at the meeting*
27 *by means of electronic transmission to the worker cooperative*
28 *company or electronic video screen communication, a record of*
29 *that vote or action shall be maintained by the worker cooperative*
30 *company.*

31 (r) *Voting by membership class is always permitted, but the*
32 *articles of organization or a written operating agreement may*
33 *provide to all or certain identified members of a specified class*
34 *or group of members the right to vote separately or with all or any*
35 *class or group of members on any matter. Voting by membership*
36 *class shall be on a one member, one vote basis. If no voting*
37 *provision is contained in the articles of organization or written*
38 *operating agreement, each of the following shall apply:*

1 (1) Any amendment to the articles of organization or operating
2 agreement shall require a two-thirds majority of the
3 worker-member class.

4 (2) In all other matters in which a vote is required, except as
5 otherwise provided in this division, a vote of a majority of the
6 worker-members shall be sufficient.

7 (s) Notwithstanding any provision to the contrary in the articles
8 or operating agreement, in no event shall the articles of
9 organization be amended by a vote of less than a two-thirds vote
10 of the worker-members.

11 (t) Notwithstanding any provision to the contrary in the articles
12 or operating agreement and subject to subdivision (r),
13 worker-members shall have the right to vote on a dissolution of
14 the worker cooperative company as provided in subdivision (b) of
15 Section 17807.01 and on a merger of the worker cooperative
16 company as provided in Section 17809.12.

17 (u) A written operating agreement may provide for the
18 appointment of officers, including, but not limited to, a chairperson
19 or a president, or both a chairperson and a president, a secretary,
20 a chief financial officer, and any other officers with the titles,
21 powers, and duties as shall be specified in the articles of
22 organization or operating agreement or as determined by the
23 managers or members. An officer may, but does not need to, be a
24 member or manager of the worker cooperative company, and any
25 number of offices may be held by the same person.

26 (v) Officers, if any, shall be appointed in accordance with the
27 written operating agreement or, if no such provision is made in
28 the operating agreement, any officers shall be appointed by the
29 managers and shall serve at the pleasure of the managers, subject
30 to the rights, if any, of an officer under any contract of employment.
31 Any officer may resign at any time upon written notice to the
32 worker cooperative company without prejudice to the rights, if
33 any, of the worker cooperative under any contract to which the
34 officer is a party.

35 (w) Subject to the provisions of the articles of organization, any
36 note, mortgage, evidence of indebtedness, contract, certificate,
37 statement, conveyance, or other instrument in writing, and any
38 assignment or endorsement thereof, executed or entered into
39 between any worker cooperative company and any other person,
40 when signed by the chairperson of the board, the president, or any

1 vice president and any secretary, any assistant secretary, the chief
2 financial officer, or any assistant treasurer of the worker
3 cooperative company, is not invalidated as to the worker
4 cooperative company by any lack of authority of the signing officers
5 in the absence of actual knowledge on the part of the other person
6 that the signing officers had no authority to execute the same.

7 17804.08. (a) A worker cooperative company shall reimburse
8 for any payment made and indemnify for any debt, obligation, or
9 other liability incurred by a member of a member-managed worker
10 cooperative company or the manager of a manager-managed
11 worker cooperative company in the course of the member's or
12 manager's activities on behalf of the worker cooperative company,
13 if, in making the payment or incurring the debt, obligation, or
14 other liability, the member or manager complied with the duties
15 stated in Section 17804.09.

16 (b) A worker cooperative company may purchase and maintain
17 insurance on behalf of a member or manager of the worker
18 cooperative company against liability asserted against or incurred
19 by the member or manager in that capacity or arising from that
20 status even if, under subdivision (g) of Section 17801.10, the
21 operating agreement could not eliminate or limit the person's
22 liability to the worker cooperative company for the conduct giving
23 rise to the liability.

24 17804.09. (a) The fiduciary duties that a member owes to a
25 member-managed worker cooperative company and the other
26 members of the worker cooperative company are the duties of
27 loyalty and care under subdivisions (b) and (c).

28 (b) A member's duty of loyalty to a worker cooperative company
29 and the other members is limited to the following:

30 (1) To account to a worker cooperative company and hold as
31 trustee for it any property, profit, or benefit derived by the member
32 in the conduct and winding up of the activities of a worker
33 cooperative company or derived from a use by the member of a
34 worker cooperative company property, including the appropriation
35 of a worker cooperative company opportunity.

36 (2) To refrain from dealing with a worker cooperative company
37 in the conduct or winding up of the activities of a worker
38 cooperative company as or on behalf of a party having an interest
39 adverse to a worker cooperative company.

1 (3) *To refrain from competing with a worker cooperative*
2 *company in the conduct or winding up of the activities of the*
3 *worker cooperative company.*

4 (c) *A member's duty of care to a worker cooperative company*
5 *and the other members in the conduct and winding up of the*
6 *activities of the worker cooperative company is limited to*
7 *refraining from engaging in grossly negligent or reckless conduct,*
8 *intentional misconduct, or a knowing violation of law.*

9 (d) *A member shall discharge the duties to a worker cooperative*
10 *company and the other members under this division or under the*
11 *operating agreement and exercise any rights consistent with the*
12 *obligation of good faith and fair dealing.*

13 (e) *A member does not violate a duty or obligation under this*
14 *article or under the operating agreement merely because the*
15 *member's conduct furthers the member's own interest.*

16 (f) *In a manager-managed worker cooperative company, all of*
17 *the following rules apply:*

18 (1) *Subdivisions (a), (b), (c), and (e) apply to the manager or*
19 *managers and not the members.*

20 (2) *Subdivision (d) applies to the members and managers.*

21 (3) *Except as otherwise provided, a member does not have any*
22 *fiduciary duty to the worker cooperative company or to any other*
23 *member solely by reason of being a member.*

24 17804.10. (a) *Upon the request of a member or holder of a*
25 *transferable interest, for purposes reasonably related to the interest*
26 *of that person as a member or a holder of a transferable interest,*
27 *a manager or, if the worker cooperative company is*
28 *member-managed, a member in possession of the requested*
29 *information, shall promptly deliver, in writing, to the member or*
30 *holder of a transferable interest, at the expense of the worker*
31 *cooperative company, a copy of the information required to be*
32 *maintained by paragraphs (1), (2), and (4) of subdivision (d) of*
33 *Section 17801.13, and any written operating agreement of the*
34 *worker cooperative company.*

35 (b) *Each member, manager, and holder of a transferable interest*
36 *has the right, upon reasonable request, for purposes reasonably*
37 *related to the interest of that person as a member, manager, or*
38 *holder of a transferable interest, to each of the following:*

1 (1) To inspect and copy during normal business hours any of
2 the records required to be maintained pursuant to Section
3 17801.13.

4 (2) To obtain in writing from the worker cooperative company,
5 promptly after becoming available, a copy of the worker
6 cooperative company's federal, state, and local income tax returns
7 for each year.

8 (c) In the case of a worker cooperative company with more than
9 35 members, each of the following shall apply:

10 (1) A manager shall cause an annual report to be sent to each
11 of the members not later than 120 days after the close of the fiscal
12 year. The report, which may be sent by electronic transmission by
13 the worker cooperative company (paragraph (1) of subdivision (i)
14 of Section 17801.02) shall contain a balance sheet as of the end
15 of the fiscal year and an income statement and a statement of
16 cashflows for the fiscal year.

17 (2) Members representing at least 5 percent of the voting
18 interests of members, or three or more members, may make a
19 written request to a manager for an income statement of the worker
20 cooperative company for the initial three-month, six-month, or
21 nine-month period of the current fiscal year ending more than 30
22 days prior to the date of the request, and a balance sheet of the
23 worker cooperative company as of the end of that period. The
24 statement shall be delivered or mailed to the members within 30
25 days thereafter.

26 (3) The financial statements referred to in this section shall be
27 accompanied by the report thereon, if any, of the independent
28 accountants engaged by the worker cooperative company or, if
29 there is no report, the certificate of the manager of the worker
30 cooperative company that the financial statements were prepared
31 without audit from the books and records of the worker cooperative
32 company.

33 (d) A manager shall promptly furnish to a member a copy of
34 any amendment to the articles of organization or operating
35 agreement executed by a manager pursuant to a power of attorney
36 from the member. The articles of organization or operating
37 agreement may be sent by electronic transmission by the worker
38 cooperative company.

39 (e) The worker cooperative company shall send or cause
40 information to be sent in writing to each member or holder of a

1 transferable interest within 90 days after the end of each taxable
2 year the information necessary to complete federal and state
3 income tax or information returns and, in the case of a worker
4 cooperative company with 35 or fewer members, a copy of the
5 worker cooperative company's federal, state, and local income
6 tax or information returns for the year.

7 (f) In addition to the remedies provided in Sections 17812.06
8 and 17812.07 and any other remedies, a court of competent
9 jurisdiction may enforce the duty of making and mailing or
10 delivering the information and financial statements required by
11 this section and, for good cause shown, extend the time therefor.

12 (g) In any action under this section or under Section 17812.07,
13 if the court finds the failure of the worker cooperative company
14 to comply with the requirements of this section is without
15 justification, the court may award an amount sufficient to
16 reimburse the person bringing the action for the reasonable
17 expenses incurred by that person, including attorney's fees, in
18 connection with the action or proceeding.

19 (h) Any waiver of the rights provided in this section shall be
20 unenforceable.

21 (i) Any request, inspection, or copying by a member or holder
22 of a transferable interest may be made by that person or by that
23 person's agent or attorney.

24 (j) Upon complaint that a worker cooperative company is failing
25 to comply with the provisions of this section, or to afford to the
26 members rights given to them in the articles of organization or
27 operating agreement, the Attorney General may, in the name of
28 the people of the State of California, send to the office required to
29 be maintained pursuant to Section 17801.13, notice of the
30 complaint.

31 (k) If the answer of the worker cooperative company is not
32 received within 30 days of the date the notice was transmitted, or
33 if the answer is not satisfactory, and if the enforcement of the rights
34 of the aggrieved persons by private civil action, by class action,
35 or otherwise, would be so burdensome or expensive as to be
36 impracticable, the Attorney General may institute, maintain, or
37 intervene in any court of competent jurisdiction or before any
38 administrative agency for relief by way of injunction, the
39 dissolution of entities, the appointment of receivers, or any other
40 temporary, preliminary, provisional, or final remedies as may be

1 appropriate to protect the rights of members or to restore the
2 position of the members for the failure to comply with the
3 requirements of Section 17801.13 or the articles of organization
4 or the operating agreement. In any action, suit, or proceeding,
5 there may be joined as parties all persons and entities responsible
6 for or affected by the activity.

7
8 Article 5. Transferable Interests and Rights of Transferees and
9 Creditors

10
11 17805.01. A transferable interest is personal property.

12 17805.02. (a) With respect to a transfer, in whole or in part,
13 of a transferable interest, all of the following apply:

14 (1) A transfer is permissible.

15 (2) A transfer does not by itself cause a member's dissociation
16 or a dissolution and winding up of the activities of a worker
17 cooperative company.

18 (3) Subject to Section 17805.04, a transfer does not entitle the
19 transferee to do any of the following:

20 (A) Participate in the management or conduct of the activities
21 of a worker cooperative company.

22 (B) Except as otherwise provided in subdivision (c), have access
23 to records or other information concerning the activities of a
24 worker cooperative company.

25 (b) (1) A member's interest other than the member's financial
26 rights in the cooperative is not transferable.

27 (2) The terms of any restriction on the transferability of financial
28 rights shall be set forth in the articles or operating agreement,
29 and conspicuously noted on any certificates evidencing a member's
30 interest.

31 (3) A transferee of a member's financial rights, to the extent
32 the rights are transferred, has the right to share in the allocation
33 of profits or losses and to receive the distributions to the member
34 transferring the interest to the same extent as the transferring
35 member. However, unless the worker cooperative company decides
36 otherwise, a transferee does not have the right to become a patron
37 of the worker cooperative company simply by virtue of having
38 received the member's financial rights.

1 (4) A transferee of a member's financial rights does not become
2 a member upon transfer of the rights unless the transferee is
3 admitted as a member by the worker cooperative company.

4 (5) A worker cooperative company need not give effect to a
5 transfer under this section until the cooperative has notice of the
6 transfer.

7 (6) A transfer of a member's financial rights in violation of a
8 restriction on transfer contained in the articles or operating
9 agreement is ineffective as to a person having notice of the
10 restriction at the time of transfer.

11 (7) A transferee has the right to receive, in accordance with the
12 transfer, distributions to which the transferor would otherwise be
13 entitled; provided, however, that the pledge or granting of a
14 security interest, lien, or other encumbrance in or against any or
15 all of the transferable interest of a transferor shall not cause the
16 transferor to cease to be a member or grant to the transferee or
17 to anyone else the power to exercise any rights or powers of a
18 member, including, without limitation, the right to receive
19 distributions to which the member is entitled.

20 (c) In a dissolution and winding up of a worker cooperative
21 company, a transferee is entitled to an account of the worker
22 cooperative company's transactions only from the date of
23 dissolution.

24 (d) A transferable interest may be evidenced by a certificate of
25 the interest issued by the worker cooperative company in a record,
26 and, subject to this article, the interest represented by the
27 certificate may be transferred by a transfer of the certificate.

28 (e) A worker cooperative company need not give effect to a
29 transferee's rights under this section until the worker cooperative
30 company has notice of the transfer.

31 (f) A transfer of a transferable interest in violation of a
32 restriction on transfer contained in the operating agreement is
33 ineffective as to a person having notice of the restriction at the
34 time of transfer.

35 (g) Except as otherwise provided in subdivision (b) of this
36 section and paragraph (2) of subdivision (d) of Section 17806.02,
37 when a member transfers a transferable interest, the transferor
38 retains the rights of a member, other than the interest in
39 distributions transferred, and retains all duties and obligations of
40 a member.

1 (h) When a member transfers a transferable interest to a person
2 that becomes a member with respect to the transferred interest,
3 the transferee is liable for the member's obligations under Section
4 17804.03 and subdivision (c) of Section 17804.06 known to the
5 transferee when the transferee becomes a member.

6 17805.03. (a) On application by a judgment creditor of a
7 member or transferee, a court may enter a charging order against
8 the transferable interest of the judgment debtor for the unsatisfied
9 amount of the judgment. A charging order constitutes a lien on a
10 judgment debtor's transferable interest and requires the worker
11 cooperative company to pay over to the person to which the
12 charging order was issued any distribution that would otherwise
13 be paid to the judgment debtor.

14 (b) To the extent necessary to effectuate the collection of
15 distributions pursuant to a charging order in effect under
16 subdivision (a), the court may do any of the following:

17 (1) Appoint a receiver of the distributions subject to the charging
18 order, with the power to make all inquiries the judgment debtor
19 might have made.

20 (2) Make all other orders necessary to give effect to the charging
21 order.

22 (3) Upon a showing that distributions under a charging order
23 will not pay the judgment debt within a reasonable time, foreclose
24 the lien and order the sale of the transferable interest. The
25 purchaser at the foreclosure sale obtains only the transferable
26 interest, does not thereby become a member, and is subject to
27 Section 17805.02.

28 (c) At any time before foreclosure under paragraph (3) of
29 subdivision (b), the member or transferee whose transferable
30 interest is subject to a charging order under subdivision (a) may
31 extinguish the charging order by satisfying the judgment and filing
32 a certified copy of the satisfaction with the court that issued the
33 charging order.

34 (d) At any time before foreclosure under paragraph (3) of
35 subdivision (b), a worker cooperative company or one or more
36 members whose transferable interests are not subject to the
37 charging order may pay to the judgment creditor the full amount
38 due under the judgment and thereby succeed to the rights of the
39 judgment creditor, including the charging order.

1 (e) This division does not deprive any member or transferee of
2 the benefit of any exemption laws applicable to the member's or
3 transferee's transferable interest.

4 (f) This section provides the exclusive remedy by which a person
5 seeking to enforce a judgment against a member or transferee
6 may, in the capacity of judgment creditor, satisfy the judgment
7 from the judgment debtor's transferable interest.

8 17805.04. If a member dies, the deceased member's personal
9 representative or other legal representative may exercise the rights
10 of a transferee provided in Section 17805.02 and, for the purposes
11 of settling the estate, the rights of a current member under Section
12 17804.10.

13 14 Article 6. Member's Dissociation

15
16 17806.01. (a) A person has the power to dissociate as a
17 member at any time, rightfully or wrongfully, by withdrawing as
18 a member by express will pursuant to subdivision (a) of Section
19 17806.02.

20 (b) A person's dissociation from a worker cooperative company
21 is wrongful only if either of the following apply to the dissociation:

22 (1) The dissociation is in breach of an express provision of the
23 operating agreement.

24 (2) The dissociation occurs before the termination of the worker
25 cooperative company and any of the following:

26 (A) The person withdraws as a member by express will.

27 (B) The person is expelled as a member by judicial order under
28 subdivision (e) of Section 17806.02.

29 (C) The person is dissociated under subdivision (g) of Section
30 17806.02 by becoming a debtor in bankruptcy.

31 (D) In the case of a person that is not a trust other than a
32 business trust, an estate, or an individual, the person is expelled
33 or otherwise dissociated as a member because it dissolved or
34 terminated.

35 (c) A person that wrongfully dissociates as a member is liable
36 to the worker cooperative company and to the other members for
37 any damages caused by the dissociation. The liability is in addition
38 to any other debt, obligation, or other liability of the member to
39 the worker cooperative company or the other members.

1 17806.02. A person is dissociated as a member from a worker
2 cooperative company when any of the following occur:

3 (a) The worker cooperative company has notice of the person's
4 express will to withdraw as a member, but, if the person specified
5 a withdrawal date later than the date the worker cooperative
6 company had notice, on that later date.

7 (b) An event stated in the operating agreement as causing the
8 person's dissociation to occur.

9 (c) The person is expelled as a member pursuant to the operating
10 agreement.

11 (d) The person is expelled as a member by the unanimous
12 consent of the other members because any of the following applies:

13 (1) It is unlawful to carry on the worker cooperative company's
14 activities with the person as a member.

15 (2) There has been a transfer of all of the person's transferable
16 interest in the worker cooperative company, other than either of
17 the following:

18 (A) A transfer for security purposes.

19 (B) A charging order in effect under Section 17805.03 that has
20 not been foreclosed.

21 (3) The person is a corporation and, within 90 days after the
22 worker cooperative company notifies the person that it will be
23 expelled as a member because the person has filed a certificate of
24 dissolution or the equivalent, its charter has been revoked, or its
25 right to conduct business has been suspended by the jurisdiction
26 of its incorporation and the certificate of dissolution has not been
27 revoked or its charter or right to conduct business has not been
28 reinstated.

29 (4) The person is a worker cooperative company or partnership
30 that has been dissolved and whose business is being wound up.

31 (e) On application by the worker cooperative company, the
32 person is expelled as a member by judicial order because the
33 person has done any of the following:

34 (1) Engaged, or is engaging, in wrongful conduct that has
35 adversely and materially affected, or will adversely and materially
36 affect, the worker cooperative company's activities.

37 (2) Willfully or persistently committed, or is willfully and
38 persistently committing, a material breach of the operating
39 agreement or the person's duties or obligations under Section
40 17804.09.

1 (3) *Engaged, or is engaging, in conduct relating to the worker*
2 *cooperative company's activities that makes it not reasonably*
3 *practicable to carry on the activities with the person as a member.*

4 (f) *In the case of a person who is an individual, if either of the*
5 *following applies:*

6 (1) *The person dies.*

7 (2) *In a member-managed worker cooperative company if either*
8 *of the following applies:*

9 (A) *A guardian or general conservator for the person is*
10 *appointed.*

11 (B) *There is a judicial order that the person has otherwise*
12 *become incapable of performing the person's duties as a member*
13 *under this division or the operating agreement.*

14 (g) *In a member-managed worker cooperative company, the*
15 *person becomes a debtor in bankruptcy.*

16 (h) *In the case of a person that is a trust or is acting as a*
17 *member by virtue of being a trustee of a trust, the trust's entire*
18 *transferable interest in the worker cooperative company is*
19 *distributed but not solely by reason of a substitution of a successor*
20 *trustee.*

21 (i) *In the case of a person that is an estate or is acting as a*
22 *member by virtue of being a personal representative of an estate,*
23 *the estate's entire transferable interest in the worker cooperative*
24 *company is distributed but not solely by reason of a substitution*
25 *of a successor personal representative.*

26 (j) *In the case of a member that is not an individual, partnership,*
27 *worker cooperative company, corporation, trust, or estate, the*
28 *termination of the member.*

29 (k) *The worker cooperative company participates in a merger*
30 *under Article 9 (commencing with Section 17809.01), and either*
31 *of the following applies:*

32 (1) *The worker cooperative company is not the surviving entity.*

33 (2) *Otherwise as a result of the merger, the person ceases to be*
34 *a member.*

35 (l) *The worker cooperative company terminates.*

36 17806.03. (a) *When a person is dissociated as a member of a*
37 *worker cooperative company all of the following apply:*

38 (1) *The person's right to participate as a member in the*
39 *management and conduct of the worker cooperative company's*
40 *activities terminates.*

1 (2) *If the worker cooperative company is member-managed, the*
2 *person's fiduciary duties as a member end with regard to matters*
3 *arising and events occurring after the person's dissociation.*

4 (3) *Subject to Section 17805.04 and Article 9 (commencing with*
5 *Section 17809.01), any transferable interest owned by the person*
6 *immediately before dissociation in the person's capacity as a*
7 *member is owned by the person solely as a transferee.*

8 (b) *A person's dissociation as a member of a worker cooperative*
9 *company does not of itself discharge the person from any debt,*
10 *obligation, or other liability to the worker cooperative company*
11 *or the other members that the person incurred while a member.*

12
13 Article 7. *Dissolution and Winding Up*
14

15 17807.01. *A worker cooperative company is dissolved, and its*
16 *activities shall be wound up, upon the happening of the first to*
17 *occur of the following:*

18 (a) *On the happening of an event set forth in a written operating*
19 *agreement or the articles of organization.*

20 (b) *Subject to subdivision (r) of Section 17804.07, by the vote*
21 *of a two-thirds majority of the worker-members of the worker*
22 *cooperative company or a greater percentage of the voting interests*
23 *of members as may be specified in the articles of organization, or*
24 *a written operating agreement.*

25 (c) *The passage of 90 consecutive days during which the worker*
26 *cooperative company has no members, except on the death of a*
27 *natural person who is the sole member of a worker cooperative*
28 *company, the status of the member, including a membership*
29 *interest, may pass to the heirs, successors, and assigns of the*
30 *member by will or applicable law. The heir, successor, or assign*
31 *of the member's interest becomes a substituted member pursuant*
32 *to subdivision (d) of Section 17804.01, subject to administration*
33 *as provided by applicable law, without the permission or consent*
34 *of the heirs, successors, or assigns or, those administering the*
35 *estate of the deceased member.*

36 (d) *Entry of a decree of judicial dissolution pursuant to Section*
37 *17807.03.*

38 17807.02. (a) *Notwithstanding any other provision of this*
39 *division, if a domestic worker cooperative company has not*
40 *conducted any business, only a majority of the members, or, if*

1 *there are no members, the majority of the managers, if any, or if*
2 *no members or managers, the person or a majority of the persons*
3 *signing the articles of organization, may execute and acknowledge*
4 *a certificate of cancellation of articles of organization, on a form*
5 *prescribed by the Secretary of State, stating all of the following:*

6 *(1) The name of the domestic worker cooperative company and*
7 *the Secretary of State's file number.*

8 *(2) That the certificate of cancellation is being filed within 12*
9 *months from the date the articles of organization was filed.*

10 *(3) That the worker cooperative company does not have any*
11 *debts or other liabilities, except as provided in paragraph (4).*

12 *(4) That a final franchise tax return, as described by Section*
13 *23332 of the Revenue and Taxation Code, or a final annual tax*
14 *return, as described by Section 17947 of the Revenue and Taxation*
15 *Code, has been or will be filed with the Franchise Tax Board, as*
16 *required under Part 10.2 (commencing with Section 18401) of*
17 *Division 2 of the Revenue and Taxation Code.*

18 *(5) That the known assets of the worker cooperative company*
19 *remaining after payment of, or adequately providing for, known*
20 *debts and liabilities have been distributed to the persons entitled*
21 *thereto or that the worker cooperative company acquired no known*
22 *assets, as the case may be.*

23 *(6) That the worker cooperative company has not conducted*
24 *any business from the time of the filing of the articles of*
25 *organization.*

26 *(7) That a majority of the managers or members voted, or, if*
27 *no managers or members, the person or a majority of the persons*
28 *signing the articles of organization, voted to dissolve the worker*
29 *cooperative company.*

30 *(8) If the worker cooperative company has received payments*
31 *for interests from investors, that those payments have been returned*
32 *to those investors.*

33 *(b) A certificate of cancellation executed and acknowledged*
34 *pursuant to subdivision (a) shall be filed with the Secretary of*
35 *State within 12 months from the date that the articles of*
36 *organization was filed. The Secretary of State shall notify the*
37 *Franchise Tax Board of the cancellation.*

38 *(c) Upon filing a certificate of cancellation pursuant to*
39 *subdivision (a), a worker cooperative company shall be canceled*
40 *and its powers, rights, and privileges shall cease.*

1 17807.03. (a) Pursuant to an action filed by any manager or
2 by any member or members of a worker cooperative company, a
3 court of competent jurisdiction may decree the dissolution of a
4 worker cooperative company whenever any of the events specified
5 in subdivision (b) occurs.

6 (b) (1) It is not reasonably practicable to carry on the business
7 in conformity with the articles of organization or operating
8 agreement.

9 (2) Dissolution is reasonably necessary for the protection of
10 the rights or interests of the complaining members.

11 (3) The business of the worker cooperative company has been
12 abandoned.

13 (4) The management of the worker cooperative company is
14 deadlocked or subject to internal dissention.

15 (5) Those in control of the worker cooperative company have
16 been guilty of, or have knowingly countenanced persistent and
17 pervasive fraud, mismanagement, or abuse of authority.

18 (c) (1) In any suit for judicial dissolution, the other members
19 may avoid the dissolution of the worker cooperative company by
20 purchasing for cash the membership interests owned by the
21 members so initiating the proceeding, the “moving parties,” at
22 their fair market value. In fixing the value, the amount of any
23 damages resulting if the initiation of the dissolution is a breach
24 by any moving party or parties of an agreement with the
25 purchasing party or parties, including, without limitation, the
26 operating agreement, may be deducted from the amount payable
27 to the moving party or parties; provided, that no member who sues
28 for dissolution on the grounds set forth in paragraph (3), (4), or
29 (5) of subdivision (a) shall be liable for damages for breach of
30 contract in bringing that action.

31 (2) If the purchasing parties elect to purchase the membership
32 interests owned by the moving parties, are unable to agree with
33 the moving parties upon the fair market value of the membership
34 interests, and give bond with sufficient security to pay the estimated
35 reasonable expenses, including attorney’s fees, of the moving
36 parties if the expenses are recoverable under paragraph (3), the
37 court, upon application of the purchasing parties, either in the
38 pending action or in a proceeding initiated in the superior court
39 of the proper county by the purchasing parties, shall stay the
40 winding up and dissolution proceeding and shall proceed to

1 *ascertain and fix the fair market value of the membership interests*
2 *owned by the moving parties.*

3 *(3) The court shall appoint three disinterested appraisers to*
4 *appraise the fair market value of the membership interests owned*
5 *by the moving parties, and shall make an order referring the matter*
6 *to the appraisers so appointed for the purpose of ascertaining that*
7 *value. The order shall prescribe the time and manner of producing*
8 *evidence, if evidence is required. The award of the appraisers or*
9 *a majority of them, when confirmed by the court, shall be final*
10 *and conclusive upon all parties. The court shall enter a decree*
11 *that shall provide in the alternative for winding up and dissolution*
12 *of the worker cooperative company, unless payment is made for*
13 *the membership interests within the time specified by the decree.*
14 *If the purchasing parties do not make payment for the membership*
15 *interests within the time specified, judgment shall be entered*
16 *against them and the surety or sureties on the bond for the amount*
17 *of the expenses, including attorney's fees, of the moving parties.*
18 *Any member aggrieved by the action of the court may appeal*
19 *therefrom.*

20 *(4) If the purchasing parties desire to prevent the winding up*
21 *and dissolution of the worker cooperative company, they shall pay*
22 *to the moving parties the value of their membership interests*
23 *ascertained and decreed within the time specified pursuant to this*
24 *section, or, in the case of an appeal, as fixed on appeal. On*
25 *receiving that payment or the tender of payment, the moving parties*
26 *shall transfer their membership interests to the purchasing parties.*

27 *(5) For the purposes of this section, the valuation date shall be*
28 *the date upon which the action for judicial dissolution was*
29 *commenced. However, the court may, upon the hearing of a motion*
30 *by any party, and for good cause shown, designate some other*
31 *date as the valuation date.*

32 *(6) A dismissal of any suit for judicial dissolution by a manager,*
33 *member, or members shall not affect the other members' rights to*
34 *avoid dissolution pursuant to this section.*

35 *17807.04. In the event of a dissolution of a worker cooperative*
36 *company all of the following apply:*

37 *(a) The managers who have not wrongfully dissolved the worker*
38 *cooperative company, or, if none, the members, or, if none, the*
39 *person or a majority of the persons signing the articles of*
40 *organization, may wind up the affairs of the worker cooperative*

1 company, unless the dissolution occurs pursuant to Section
2 17807.03, in which event the winding up shall be conducted in
3 accordance with the decree of dissolution. The persons winding
4 up the affairs of the worker cooperative company shall give written
5 notice of the commencement of winding up by mail to all known
6 creditors and claimants whose addresses appear on the records
7 of the worker cooperative company.

8 (b) Upon the petition of any manager or of any member or
9 members, or three or more creditors of a worker cooperative
10 company, a court of competent jurisdiction may enter a decree
11 ordering the winding up of the worker cooperative company, if
12 that appears necessary for the protection of any parties in interest.
13 The decree shall designate the managers or members, or if good
14 cause is shown, another person or persons, who are to wind up
15 the affairs of the worker cooperative company.

16 (c) Except as otherwise provided in the articles of organization
17 or a written operating agreement, the persons winding up the
18 affairs of the worker cooperative company pursuant to this section
19 shall be entitled to reasonable compensation.

20 17807.05. (a) Except as otherwise provided in the articles of
21 organization or the written operating agreement, after determining
22 that all the known debts and liabilities of a worker cooperative
23 company in the process of winding up, including, without
24 limitation, debts and liabilities to members who are creditors of
25 the worker cooperative company, have been paid or adequately
26 provided for, the remaining assets shall be distributed among the
27 members according to their respective rights and preferences as
28 follows:

29 (1) To members in satisfaction of liabilities for distributions
30 pursuant to Sections 17804.04, 17804.05, and 17804.06.

31 (2) To members of the worker cooperative company for the
32 return of their contributions.

33 (3) To members in the proportions in which those members
34 share in distributions.

35 (b) If the winding up is by court proceeding or subject to court
36 supervision, the distribution shall not be made until after the
37 expiration of any period for the presentation of claims that has
38 been prescribed by order of the court.

39 (c) (1) The payment of a debt or liability, whether the
40 whereabouts of the creditor is known or unknown, has been

1 adequately provided for if the payment has been provided for by
2 either of the following means:

3 (A) Payment for the debt or liability has been assumed or
4 guaranteed in good faith by one or more financially responsible
5 persons or by the United States government or any agency of the
6 United States government, and the provision, including the
7 financial responsibility of the person, was determined in good faith
8 and with reasonable care by the members or managers of the
9 worker cooperative company to be adequate at the time of any
10 distribution of the assets pursuant to this section.

11 (B) The amount of the debt or liability has been deposited as
12 provided in Section 2008 of the General Corporation Law.

13 (2) This subdivision shall not prescribe the exclusive means of
14 making adequate provision for debts and liabilities.

15 17807.06. (a) A worker cooperative company that is dissolved
16 nevertheless continues to exist for the purpose of winding up its
17 affairs, prosecuting and defending actions by or against it in order
18 to collect and discharge obligations, disposing of and conveying
19 its property, and collecting and dividing its assets. A worker
20 cooperative company shall not continue business except so far as
21 necessary for its winding up.

22 (b) No action or proceeding to which a worker cooperative
23 company is a party abates by the dissolution of the worker
24 cooperative company or by reason of proceedings for its winding
25 up and dissolution.

26 (c) Any assets inadvertently or otherwise omitted from the
27 winding up continue in the dissolved worker cooperative company
28 for the benefit of the persons entitled to those assets upon
29 dissolution and on realization shall be distributed accordingly.

30 (d) After dissolution of the worker cooperative company, the
31 worker cooperative company is bound by both of the following:

32 (1) The act of a person authorized to wind up the affairs of the
33 worker cooperative company, if the act is appropriate for winding
34 up the activities of the worker cooperative company.

35 (2) The act of a person authorized to act on behalf of the worker
36 cooperative company, if the act would have bound the worker
37 cooperative company before dissolution, if the other party to the
38 transaction did not have notice of the dissolution.

39 17807.07. (a) (1) Causes of action against a dissolved worker
40 cooperative company, whether arising before or after the

1 *dissolution of the worker cooperative company, may be enforced*
2 *against any of the following:*

3 *(A) Against the dissolved worker cooperative company to the*
4 *extent of its undistributed assets, including, without limitation, any*
5 *insurance assets held by the worker cooperative company that*
6 *may be available to satisfy claims.*

7 *(B) If any of the assets of the dissolved worker cooperative*
8 *company have been distributed to members, against members of*
9 *the dissolved worker cooperative company to the extent of the*
10 *worker cooperative company assets distributed to them upon*
11 *dissolution of the worker cooperative company.*

12 *Any member compelled to return distributed assets in an amount*
13 *that exceeds the sum of the member's pro rata share of the claim*
14 *and the amount for which the member could otherwise be held*
15 *liable under Section 17804.05 or 17804.06 may seek contribution*
16 *for the excess from any other member or manager, up to the sum*
17 *of that other person's pro rata share of the claim and that other*
18 *person's liabilities under Section 17804.05 or 17804.06.*

19 *(2) Except as set forth in subdivision (c), all causes of action*
20 *against a member of a dissolved worker cooperative company*
21 *arising under this section are extinguished unless the claimant*
22 *commences a proceeding to enforce the cause of action against*
23 *that member of a dissolved worker cooperative company prior to*
24 *the earlier of the following:*

25 *(A) The expiration of the statute of limitations applicable to the*
26 *cause of action.*

27 *(B) Four years after the effective date of the dissolution of the*
28 *worker cooperative company.*

29 *(3) As a matter of procedure only, and not for purposes of*
30 *determining liability, members of the dissolved worker cooperative*
31 *company may be sued in the name of the worker cooperative*
32 *company upon any cause of action against the worker cooperative*
33 *company. This section does not affect the rights of the worker*
34 *cooperative company or its creditors under Sections 17804.05 and*
35 *17804.06, or the rights, if any, of creditors under the Uniform*
36 *Fraudulent Transfer Act, that may arise against the member of a*
37 *worker cooperative company.*

38 *(b) Summons or other process against a worker cooperative*
39 *company may be served by delivering a copy thereof to a manager,*
40 *member, officer, or person having charge of its assets or, if none*

1 of these persons can be found, to any agent upon whom process
2 might be served at the time of dissolution. If none of those persons
3 can be found with due diligence and it is so shown by affidavit to
4 the satisfaction of the court, then the court may make an order
5 that summons or other process be served upon the dissolved worker
6 cooperative company by personally delivering a copy of the
7 summons or other process, together with a copy of the order, to
8 the Secretary of State or an assistant or Deputy Secretary of State.
9 Service in this manner is deemed complete on the 10th day after
10 delivery of the process to the Secretary of State. Upon receipt of
11 process and the fee therefor, the Secretary of State shall give notice
12 to the worker cooperative company as provided in Section
13 17801.16.

14 (c) Every worker cooperative company shall survive and
15 continue to exist indefinitely for the purpose of being sued in any
16 quiet title action. Any judgment rendered in that action shall bind
17 each and all of its members or other persons having any equity or
18 other interest in the worker cooperative company to the extent of
19 that interest and the action shall have the same force and effect
20 as an action brought under the provisions of Sections 410.50 and
21 410.60 of the Code of Civil Procedure. Service of summons or
22 other process in any action may be made as provided in Chapter
23 4 (commencing with Section 413.10) of Title 5 of Part 2 of the
24 Code of Civil Procedure or as provided in subdivision (b).

25 (d) For purposes of Article 4 (commencing with Section 19071)
26 of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation
27 Code, the liability described in this section shall be considered a
28 liability at law with respect to a dissolved worker cooperative
29 company.

30 17807.08. (a) (1) The managers shall cause to be filed in the
31 office of, and on a form prescribed by, the Secretary of State, a
32 certificate of dissolution upon the dissolution of the worker
33 cooperative company pursuant to Article 7 (commencing with
34 Section 17807.01), unless the event causing the dissolution is that
35 specified in subdivision (c) of Section 17807.01, in which case the
36 persons conducting the winding up of the worker cooperative
37 company's affairs pursuant to Section 17807.04 shall have the
38 obligation to file the certificate of dissolution.

39 (2) The certificate of dissolution shall set forth all of the
40 following:

1 (A) *The name of the worker cooperative company and the*
2 *Secretary of State's file number.*

3 (B) *Any other information the persons filing the certificate of*
4 *dissolution determine to include.*

5 (3) *If a dissolution pursuant to subdivision (b) of Section*
6 *17807.01 is made by the vote of all of the members and a statement*
7 *to that effect is added to the certificate of cancellation of articles*
8 *of organization pursuant to subdivision (b), the separate filing of*
9 *a certificate of dissolution pursuant to this subdivision is not*
10 *required.*

11 (b) (1) *The persons who filed the certificate of dissolution shall*
12 *cause to be filed in the office of, and on a form prescribed by, the*
13 *Secretary of State, a certificate of cancellation of articles of*
14 *organization upon the completion of the winding up of the affairs*
15 *of the worker cooperative company pursuant to Section 17807.06,*
16 *unless the event causing the dissolution is that specified in*
17 *subdivision (c) of Section 17807.01, in that case the persons*
18 *conducting the winding up of the worker cooperative company's*
19 *affairs pursuant to Section 17807.04 shall have the obligation to*
20 *file the certificate of cancellation of articles of organization.*

21 (2) *The certificate of cancellation of articles of organization*
22 *shall set forth all of the following:*

23 (A) *The name of the worker cooperative company and the*
24 *Secretary of State's file number.*

25 (B) *That a final franchise tax return, as described by Section*
26 *23332 of the Revenue and Taxation Code, or a final annual tax*
27 *return, as described by Section 17947 of the Revenue and Taxation*
28 *Code, has been or will be filed with the Franchise Tax Board, as*
29 *required under Part 10.2 (commencing with Section 18401) of*
30 *Division 2 of the Revenue and Taxation Code.*

31 (C) *Any other information the persons filing the certificate of*
32 *cancellation of articles of organization determine to include.*

33 (3) *The Secretary of State shall notify the Franchise Tax Board*
34 *of the filing.*

35 (c) *Upon filing a certificate of cancellation pursuant to*
36 *subdivision (b), a worker cooperative company shall be canceled*
37 *and its powers, rights, and privileges shall cease.*

38 17807.09. (a) *Notwithstanding the filing of a certificate of*
39 *dissolution, a majority in interest of the members may cause to be*
40 *filed, in the office of, and on a form prescribed by, the Secretary*

1 of State, a certificate of continuation, in any of the following
2 circumstances:

3 (1) The business of the worker cooperative company is to be
4 continued pursuant to a unanimous vote of the remaining members.

5 (2) The dissolution of the worker cooperative company was by
6 vote of the members pursuant to subdivision (b) of Section
7 17807.01 and each member who consented to the dissolution has
8 agreed in writing to revoke his or her vote in favor of or consent
9 to the dissolution.

10 (3) The worker cooperative company was not, in fact, dissolved.

11 (b) The certificate of continuation shall set forth all of the
12 following:

13 (1) The name of the worker cooperative company and the
14 Secretary of State's file number.

15 (2) The grounds provided by subdivision (a) that are the basis
16 for filing the certificate of continuation.

17 (c) Upon the filing of a certificate of continuation, the certificate
18 of dissolution shall be of no effect from the time of the filing of the
19 certificate of dissolution.

20

21 Article 8. Actions by Members

22

23 17808.01. Any member of a worker cooperative company may
24 bring a class action on behalf of all or a class of members to
25 enforce any claim common to those members and any of those
26 actions shall be governed by the law governing class actions
27 generally, provided that in order to maintain the class action there
28 shall be no requirement that the class be so numerous that joinder
29 of all members of the class is impracticable.

30 17808.02. (a) No action shall be instituted or maintained in
31 right of any domestic by any member of the worker cooperative
32 company unless both of the following conditions exist:

33 (1) The plaintiff alleges in the complaint that the plaintiff was
34 a member of record, or beneficiary, at the time of the transaction
35 or any part of the transaction of which the plaintiff complains, or
36 that the plaintiff's interest later devolved upon the plaintiff by
37 operation of law from a member who was a member at the time
38 of the transaction or any part of the transaction complained of.
39 Any member who does not meet these requirements may
40 nevertheless be allowed in the discretion of the court to maintain

1 *the action on a preliminary showing to and determination by the*
2 *court, by motion and after a hearing at which the court shall*
3 *consider any evidence, by affidavit or testimony, as it deems*
4 *material, of all of the following:*

5 *(A) There is a strong prima facie case in favor of the claim*
6 *asserted on behalf of the worker cooperative company.*

7 *(B) No other similar action has been or is likely to be instituted.*

8 *(C) The plaintiff acquired the interest before there was*
9 *disclosure to the public or to the plaintiff of the wrongdoing of*
10 *which plaintiff complains.*

11 *(D) Unless the action can be maintained, the defendant may*
12 *retain a gain derived from defendant's willful breach of a fiduciary*
13 *duty.*

14 *(E) The requested relief will not result in unjust enrichment of*
15 *the worker cooperative company or any member of the worker*
16 *cooperative company.*

17 *(2) The plaintiff alleges in the complaint with particularity the*
18 *plaintiff's efforts to secure from the managers the action the*
19 *plaintiff desires or the reasons for not making that effort, and*
20 *alleges further that the plaintiff has either informed the worker*
21 *cooperative company or the managers in writing of the ultimate*
22 *facts of each cause of action against each defendant or delivered*
23 *to the worker cooperative company or the managers a true copy*
24 *of the complaint that the plaintiff proposes to file.*

25 *(b) In any action referred to in subdivision (a), at any time*
26 *within 30 days after service of summons upon the worker*
27 *cooperative company or upon any defendant who is a manager of*
28 *the worker cooperative company or held that position at the time*
29 *of the acts complained of, the worker cooperative company or the*
30 *defendant may move the court for an order, upon notice and*
31 *hearing, requiring the plaintiff to furnish security as hereinafter*
32 *provided. The motion shall be based upon one or both of the*
33 *following grounds:*

34 *(1) That there is no reasonable possibility that the prosecution*
35 *of the cause of action alleged in the complaint against the moving*
36 *party will benefit the worker cooperative company or its members.*

37 *(2) That the moving party, if other than the worker cooperative*
38 *company did not participate in the transaction complained of in*
39 *any capacity. The court, on application of the worker cooperative*

1 company or any defendant, may, for good cause shown, extend
2 the 30-day period for an additional period not exceeding 60 days.

3 (c) (1) At the hearing upon any motion pursuant to subdivision
4 (b), the court shall consider evidence, written or oral, by witnesses
5 or affidavit, as may be material to the ground upon which the
6 motion is based, or to a determination of the probable reasonable
7 expenses, including attorney's fees, of the worker cooperative
8 company and the moving party that will be incurred in the defense
9 of the action.

10 (2) If the court determines, after hearing the evidence adduced
11 by the parties, that the moving party has established a probability
12 in support of any of the grounds upon which the motion is based,
13 the court shall fix the nature and amount of security, not to exceed
14 fifty thousand dollars (\$50,000), to be furnished by the plaintiff
15 for reasonable expenses, including attorney's fees, that may be
16 incurred by the moving party and the worker cooperative company
17 in connection with the action. A ruling by the court on the motion
18 shall not be a determination of any issue in the action or of the
19 merits of the action. The amount of the security may thereafter be
20 increased or decreased in the discretion of the court upon a
21 showing that the security provided has or may become inadequate
22 or is excessive, but the court shall not in any event increase the
23 total amount of the security beyond fifty thousand dollars (\$50,000)
24 in the aggregate for all defendants. If the court, upon a motion,
25 makes a determination that security shall be furnished by the
26 plaintiff as to any one or more defendants, the action shall be
27 dismissed as to that defendant or those defendants, unless the
28 security required by the court has been furnished within any
29 reasonable time as shall be fixed by the court. The worker
30 cooperative company and the moving party shall have recourse
31 to the security in the amount that the court determines upon the
32 termination of the action.

33 (d) If the plaintiff, either before or after a motion is made
34 pursuant to subdivision (b), or any order or determination pursuant
35 to that motion, posts good and sufficient bond or bonds in the
36 aggregate amount of fifty thousand dollars (\$50,000) to secure
37 the reasonable expenses of the parties entitled to make the motion,
38 the plaintiff shall be deemed to have complied with the
39 requirements of this section and with any order for security made
40 pursuant to this section. Any motion then pending shall be

1 *dismissed and no further or additional bond or other security shall*
2 *be required.*

3 *(e) If a motion is filed pursuant to subdivision (b), no pleadings*
4 *need be filed by the worker cooperative company or any other*
5 *defendant and the prosecution of the action shall be stayed until*
6 *10 days after the motion has been disposed of.*

7
8 *Article 9. Merger and Conversion*
9

10 *17809.01. For purposes of this article, the following definitions*
11 *apply:*

12 *(a) "Converted entity" means the other business entity or*
13 *foreign other business entity that results from a conversion of a*
14 *domestic worker cooperative company under this division.*

15 *(b) "Converted worker cooperative company" means a domestic*
16 *worker cooperative company that results from a conversion of an*
17 *other business entity or a foreign other business entity or a foreign*
18 *limited liability company pursuant to Section 17809.08.*

19 *(c) "Converting worker cooperative company" means a*
20 *domestic worker cooperative company that converts to an other*
21 *business entity or a foreign other business entity or a foreign*
22 *limited liability company pursuant to this division.*

23 *(d) "Converting entity" means an other business entity or a*
24 *foreign other business entity or a foreign limited liability company*
25 *that converts to a domestic worker cooperative company pursuant*
26 *to Section 17809.08.*

27 *(e) "Constituent corporation" means a corporation that is*
28 *merged with or into one or more worker cooperative companies,*
29 *foreign limited liability companies, or other business entities and*
30 *that includes a surviving corporation.*

31 *(f) "Constituent worker cooperative company" means a worker*
32 *cooperative company that is merged with or into one or more other*
33 *worker cooperative companies, foreign limited liability companies,*
34 *or other business entities and that includes a surviving worker*
35 *cooperative company.*

36 *(g) "Constituent other business entity" means an other business*
37 *entity that is merged with or into one or more worker cooperative*
38 *companies or foreign limited liability companies and that includes*
39 *a surviving other business entity.*

1 (h) “Disappearing worker cooperative company” means a
2 constituent worker cooperative company that is not the surviving
3 worker cooperative company.

4 (i) “Disappearing other business entity” means a constituent
5 other business entity that is not the surviving other business entity.

6 (j) “Foreign other business entity” means an other business
7 entity formed under the laws of a jurisdiction other than this state.

8 (k) “Other business entity” means a corporation, general
9 partnership, limited partnership, business trust, real estate
10 investment trust, a limited liability company, or an unincorporated
11 association other than a nonprofit association, but excludes a
12 worker cooperative company.

13 (l) “Surviving worker cooperative company” means a worker
14 cooperative company into which one or more other worker
15 cooperative companies, other business entities, or foreign business
16 entities are merged.

17 (m) “Surviving other business entity” means an other business
18 entity into which one or more worker cooperative companies and
19 other business entities are merged.

20 17809.02. (a) A worker cooperative company may be converted
21 into an other business entity or a foreign other business entity or
22 a foreign limited liability company pursuant to this article if both
23 of the following apply:

24 (1) Pursuant to a conversion into a domestic or foreign general
25 partnership or limited partnership or into a foreign limited liability
26 company, each of the members of the converting worker
27 cooperative company receives a percentage interest in the profits
28 and capital of the converted entity equal to that member’s
29 percentage interest in profits and capital of the converting worker
30 cooperative company as of the effective time of the conversion.

31 (2) Pursuant to a conversion into an other business entity or
32 foreign other business entity not specified in paragraph (1), both
33 of the following occur:

34 (A) Each worker cooperative company interest of the same class
35 is treated equally with respect to any distribution of cash, property,
36 rights, interests, or securities of the converted entity, unless all
37 members of the class consent.

38 (B) The nonredeemable worker cooperative company interests
39 of the converting worker cooperative company are converted only

1 *into nonredeemable interests or securities of the converted entity,*
2 *unless all holders of the unredeemable interests consent.*

3 *(b) The conversion of a worker cooperative company to an other*
4 *business entity or a foreign other business entity or a foreign*
5 *limited liability company may be effected only if both of the*
6 *following conditions are satisfied:*

7 *(1) The law under which the converted entity will exist expressly*
8 *permits the formation of that entity pursuant to a conversion.*

9 *(2) The worker cooperative company complies with all other*
10 *requirements of any other law that applies to conversion to the*
11 *converted entity.*

12 *17809.03. (a) A worker cooperative company that desires to*
13 *convert to an other business entity or a foreign other business*
14 *entity or a foreign limited liability company shall approve a plan*
15 *of conversion.*

16 *The plan of conversion shall state all of the following:*

17 *(1) The terms and conditions of the conversion.*

18 *(2) The place of the organization of the converted entity and of*
19 *the converting worker cooperative company and the name of the*
20 *converted entity after conversion.*

21 *(3) The manner of converting the membership interests of each*
22 *of the members into shares of, securities of, or interests in, the*
23 *converted entity.*

24 *(4) The provisions of the governing documents for the converted*
25 *entity, including the worker cooperative company articles of*
26 *organization and operating agreement, or articles or certificate*
27 *of incorporation if the converted entity is a corporation, to which*
28 *the holders of interests in the converted entity are to be bound.*

29 *(5) Any other details or provisions that are required by the laws*
30 *under which the converted entity is organized, or that are desired*
31 *by the parties.*

32 *(b) (1) The plan of conversion shall be approved by a two-thirds*
33 *majority of the worker-members, subject to subdivision (r) of*
34 *Section 17804.07.*

35 *(2) However, if the members of the worker cooperative company*
36 *would become personally liable for any obligations of the*
37 *converted entity as a result of the conversion, the plan of*
38 *conversion shall be approved by all of the limited members of the*
39 *converting worker cooperative company, unless the plan of*

1 *conversion provides that all members will have dissenters' rights*
2 *as provided in Article 10 (commencing with Section 17810.01).*

3 *(c) Upon the effectiveness of the conversion, all members of the*
4 *converting worker cooperative company, except those that exercise*
5 *dissenters' rights as provided in Article 10 (commencing with*
6 *Section 17810.01), shall be deemed parties to any governing*
7 *documents for the converted entity adopted as part of the plan of*
8 *conversion, regardless of whether or not the member has executed*
9 *the plan of conversion or the governing documents for the*
10 *converted entity. Any adoption of governing documents made*
11 *pursuant to the conversion shall be effective at the effective time*
12 *or date of the conversion.*

13 *(d) Notwithstanding its prior approval, a plan of conversion*
14 *may be amended before the conversion takes effect if the*
15 *amendment is approved by all managers and a majority of the*
16 *members or if there are no managers, a majority of the members*
17 *of the converting worker cooperative company and, if the*
18 *amendment changes any of the principal terms of the plan of*
19 *conversion, the amendment is approved by the managers and*
20 *members of the converting worker cooperative company in the*
21 *same manner and to the same extent as required for the approval*
22 *of the original plan of conversion.*

23 *(e) The managers by unanimous approval and the members of*
24 *a converting worker cooperative company may, by majority*
25 *approval at any time before the conversion is effective, in their*
26 *discretion, abandon a conversion, without further approval by the*
27 *managers or members, subject to the contractual rights of third*
28 *parties other than managers or members.*

29 *(f) The converted entity shall keep the plan of conversion at the*
30 *principal place of business of the converted entity if the converted*
31 *entity is a domestic worker cooperative company or foreign other*
32 *business entity, at the principal office of, or registrar or transfer*
33 *agent of, the converted entity, if the converted entity is a domestic*
34 *corporation, or at the office where records are to be kept pursuant*
35 *to Section 17801.13 if the converted entity is a domestic worker*
36 *cooperative company. Upon the request of a member of a*
37 *converting worker cooperative company, the authorized person*
38 *on behalf of the converted entity shall promptly deliver to the*
39 *member or the holder of shares, interests, or other securities, at*
40 *the expense of the converted entity, a copy of the plan of*

1 *conversion. A waiver by a member of the rights provided in this*
2 *subdivision shall be unenforceable.*

3 *17809.04. (a) A conversion into an other business entity or a*
4 *foreign other business entity or a foreign limited liability company*
5 *shall become effective upon the earliest date that all of the*
6 *following occur:*

7 *(1) The plan of conversion is approved by the members of the*
8 *converting worker cooperative company, as provided in Section*
9 *17809.03.*

10 *(2) All documents required by law to create the converted entity*
11 *are filed, which documents shall also contain a statement of*
12 *conversion, if required under Section 17809.06.*

13 *(3) The effective date, if set forth in the plan of conversion,*
14 *occurs.*

15 *(b) A copy of the certificate of limited partnership, statement of*
16 *partnership authority, articles of incorporation, or certificate of*
17 *conversion complying with Section 17809.06, if applicable, duly*
18 *certified by the Secretary of State, is conclusive evidence of the*
19 *conversion of the worker cooperative company.*

20 *17809.05. (a) If the worker cooperative company is converting*
21 *into a foreign limited liability company or foreign other business*
22 *entity, those conversion proceedings shall be in accordance with*
23 *the laws of the state or place of organization of the foreign limited*
24 *liability company or foreign other business entity and the*
25 *conversion shall become effective in accordance with that law.*

26 *(b) (1) To enforce an obligation of a worker cooperative*
27 *company that has converted to a foreign limited liability company*
28 *or foreign other business entity, the Secretary of State shall only*
29 *be the agent for service of process in an action or proceeding*
30 *against that converted foreign entity, if the agent designated for*
31 *the service of process for that entity is a natural person and cannot*
32 *be found with due diligence or if the agent is a corporation and*
33 *no person, to whom delivery may be made, may be located with*
34 *due diligence, or if no agent has been designated and if none of*
35 *the officers, members, managers, or agents of that entity may be*
36 *located after diligent search, and it is shown by affidavit to the*
37 *satisfaction of the court. The court then may make an order that*
38 *service be made by personal delivery to the Secretary of State or*
39 *to an assistant or Deputy Secretary of State of two copies of the*
40 *process together with two copies of the order, and the order shall*

1 set forth an address to which the process shall be sent by the
2 Secretary of State. Service in this manner is deemed complete on
3 the 10th day after delivery of the process to the Secretary of State.

4 (2) Upon receipt of the process and order and the fee set forth
5 in Section 12197 of the Government Code, the Secretary of State
6 shall provide notice to that entity of the service of the process by
7 forwarding by certified mail, return receipt requested, a copy of
8 the process and order to the address specified in the order.

9 (3) The Secretary of State shall keep a record of all process
10 served upon the Secretary of State and shall record the time of
11 service and the Secretary of State's action with respect to the
12 process served. The certificate of the Secretary of State, under the
13 Secretary of State's official seal, certifying to the receipt of process,
14 the providing of notice of process to that entity, and the forwarding
15 of the process shall be competent and prima facie evidence of the
16 matters stated therein.

17 17809.06. (a) Upon conversion of a worker cooperative
18 company, one of the following applies:

19 (1) If the worker cooperative company is converting into a
20 domestic limited partnership, a statement of conversion shall be
21 completed on a certificate of limited partnership for the converted
22 entity and shall be filed with the Secretary of State.

23 (2) If the worker cooperative company is converting into a
24 domestic partnership, a statement of conversion shall be completed
25 on the statement of partnership authority for the converted entity.
26 If no statement of partnership authority is filed, a certificate of
27 conversion shall be filed separately with the Secretary of State.

28 (3) If the worker cooperative company is converting into a
29 domestic corporation, a statement of conversion shall be completed
30 on the articles of incorporation for the converted entity and shall
31 be filed with the Secretary of State.

32 (4) If the worker cooperative company is converting to a foreign
33 limited liability company or foreign other business entity, a
34 certificate of conversion shall be filed with the Secretary of State.

35 (b) Any certificate or statement of conversion shall be executed
36 and acknowledged by all members, unless a lesser number is
37 provided in the articles of organization or operating agreement,
38 and shall set forth all of the following:

39 (1) The name and the Secretary of State's file number of the
40 converting worker cooperative company.

1 (2) *A statement that the principal terms of the plan of conversion*
2 *were approved by a vote of the members, that equaled or exceeded*
3 *the vote required under Section 17809.03, specifying each class*
4 *entitled to vote and the percentage vote required of each class.*

5 (3) *The name, form and jurisdiction of organization, and*
6 *Secretary of State's file number, if any, of the converted entity.*

7 (4) *The mailing address of the converted entity's agent for*
8 *service of process and the chief executive office of the converted*
9 *entity.*

10 (c) *The filing with the Secretary of State of a certificate of*
11 *conversion, a certificate of limited partnership, a statement of*
12 *partnership authority, or articles of incorporation containing a*
13 *statement of conversion as set forth in subdivision (a) shall have*
14 *the effect of the filing of a certificate of cancellation by the*
15 *converting worker cooperative company, and no converting worker*
16 *cooperative company that has made the filing is required to take*
17 *any action under Article 7 (commencing with Section 17807.01)*
18 *as a result of that conversion.*

19 (d) *For the purposes of this division, the certificate of conversion*
20 *shall be on a form prescribed by the Secretary of State.*

21 17809.07. (a) *Whenever a worker cooperative company or*
22 *other business entity having any real property in this state converts*
23 *into a worker cooperative company or an other business entity*
24 *pursuant to the laws of this state or of the state or place where the*
25 *worker cooperative company or other business entity was*
26 *organized, and the laws of the state or place of organization,*
27 *including this state, of the converting worker cooperative company*
28 *or other converting entity provide substantially that the conversion*
29 *vests in the converted worker cooperative company or other*
30 *converted entity all the real property of the converting worker*
31 *cooperative company or other converting entity, the filing for*
32 *record in the office of the county recorder of any county in this*
33 *state where any of the real property of the converting worker*
34 *cooperative company or other converting entity is located of either*
35 *of the following shall evidence record ownership in the converted*
36 *worker cooperative company or other converted entity of all*
37 *interest of the converting worker cooperative company or other*
38 *converting entity in and to the real property located in that county:*

39 (1) *A certificate of conversion or a statement of partnership*
40 *authority, a certificate of limited partnership, or articles of*

1 *incorporation complying with Section 17809.06 certified on or*
2 *after the effective date of the conversion by the Secretary of State.*

3 *(2) A copy of a certificate of conversion or a statement of*
4 *partnership authority, certificate of limited partnership, articles*
5 *of organization, articles of incorporation, or other certificate or*
6 *document evidencing the creation of a foreign other business entity*
7 *by conversion, containing a statement of conversion, certified by*
8 *the Secretary of State or an authorized public official of the state*
9 *or place pursuant to the laws of which the conversion is effected.*

10 *(b) A filed and, if appropriate, recorded certificate of conversion*
11 *or a statement of partnership authority, certificate of limited*
12 *partnership, articles of organization, articles or certificate of*
13 *incorporation, or other certificate evidencing the creation of a*
14 *foreign other business entity by conversion, containing a statement*
15 *of conversion, filed pursuant to subdivision (a) of Section 17809.06,*
16 *stating the name of the converting worker cooperative company*
17 *or other converting entity in whose name property was held before*
18 *the conversion and the name of the converted entity or converted*
19 *worker cooperative company, but not containing all of the other*
20 *information required by Section 17809.06, operates with respect*
21 *to the entities named to the extent provided in subdivision (a).*

22 *(c) Recording of a certificate of conversion, or a statement of*
23 *partnership authority, certificate of limited partnership, articles*
24 *of organization, articles of incorporation, or other certificate*
25 *evidencing the creation of an other business entity or a worker*
26 *cooperative company by conversion, containing a statement of*
27 *conversion, in accordance with subdivision (a), shall create, in*
28 *favor of bona fide purchasers or encumbrances for value, a*
29 *conclusive presumption that the conversion was validly completed.*

30 *17809.08. (a) An other business entity or a foreign other*
31 *business entity or a foreign limited liability company may be*
32 *converted to a domestic worker cooperative company pursuant to*
33 *this article only if the converting entity is authorized by the laws*
34 *pursuant to which it is organized to effect the conversion.*

35 *(b) An other business entity or a foreign other business entity*
36 *or a foreign limited liability company that desires to convert into*
37 *a domestic worker cooperative company shall approve a plan of*
38 *conversion or another instrument as is required to be approved*
39 *to effect the conversion pursuant to the laws under which that*
40 *entity is organized.*

1 (c) *The conversion of an other business entity or a foreign other*
2 *business entity or a foreign limited liability company into a*
3 *domestic worker cooperative company shall be approved by the*
4 *number or percentage of the members, managers, shareholders,*
5 *or holders of interest of the converting entity as is required by the*
6 *laws under which that entity is organized, or a greater or lesser*
7 *percentage, subject to applicable laws, as set forth in the*
8 *converting entity's partnership agreement, articles of organization,*
9 *operating agreement, articles or certificate of incorporation, or*
10 *other governing document.*

11 (d) *The conversion by an other business entity or a foreign other*
12 *business entity or a foreign limited liability company into a*
13 *domestic worker cooperative company shall be effective under this*
14 *article at the time the conversion is effective under the laws under*
15 *which the converting entity is organized, as long as the articles of*
16 *organization containing a statement of conversion has been filed*
17 *with the Secretary of State. If the converting entity's governing*
18 *law is silent as to the effectiveness of the conversion, the conversion*
19 *shall be effective upon the completion of all acts required under*
20 *this division to form a worker cooperative company.*

21 (e) *If the converting foreign limited liability company or foreign*
22 *limited liability partnership is authorized to transact intrastate*
23 *business in this state, the filing with the Secretary of State of its*
24 *articles of organization containing a statement of conversion*
25 *pursuant to the laws under which the converting foreign limited*
26 *liability company or foreign other business entity is organized*
27 *shall have the effect of the filing of a certificate of cancellation by*
28 *the converting foreign limited partnership and no converting*
29 *foreign limited liability company or foreign limited partnership*
30 *that has made the filing is required to file a certificate of*
31 *cancellation under Section 15909.07 as a result of that conversion.*
32 *If a converting other business entity is a foreign corporation*
33 *qualified to transact intrastate business in this state, the foreign*
34 *corporation shall, by virtue of the filing, automatically surrender*
35 *its right to transact intrastate business.*

36 17809.09. (a) *An entity that converts into another entity*
37 *pursuant to this article is for all purposes other than for the*
38 *purposes of Part 10 (commencing with Section 17001), Part 10.2*
39 *(commencing with Section 18401), and Part 11 (commencing with*
40 *Section 23001) of Division 2 of the Revenue and Taxation Code,*

1 *the same entity that existed before the conversion and the*
2 *conversion shall not be deemed a transfer of property.*

3 *(b) Upon a conversion taking effect, all of the following apply:*

4 *(1) All the rights and property, whether real, personal, or mixed,*
5 *of the converting entity or converting worker cooperative company*
6 *are vested in the converted entity or converted worker cooperative*
7 *company.*

8 *(2) All debts, liabilities, and obligations of the converting entity*
9 *or converting worker cooperative company continue as debts,*
10 *liabilities, and obligations of the converted entity or converted*
11 *worker cooperative company.*

12 *(3) All rights of creditors and liens upon the property of the*
13 *converting entity or converting worker cooperative company shall*
14 *be preserved unimpaired and remain enforceable against the*
15 *converted entity or converted worker cooperative company to the*
16 *same extent as against the converting entity or converting worker*
17 *cooperative company as if the conversion had not occurred.*

18 *(4) Any action or proceeding pending by or against the*
19 *converting entity or converting worker cooperative company may*
20 *be continued against the converted entity or converted worker*
21 *cooperative company as if the conversion had not occurred.*

22 *(c) A member of a converting worker cooperative company is*
23 *liable for both of the following:*

24 *(1) All obligations of the converting worker cooperative*
25 *company for which the member was personally liable before the*
26 *conversion.*

27 *(2) All obligations of the converted entity incurred after the*
28 *conversion takes effect, but those obligations may be satisfied only*
29 *out of property of the entity if that member of a worker cooperative*
30 *company, or a shareholder in a corporation, or unless expressly*
31 *provided otherwise in the articles of organization or other*
32 *governing documents, a limited partner of a limited partnership,*
33 *or a holder of equity securities in another converted entity if the*
34 *holders of equity securities in that entity are not personally liable*
35 *for the obligations of that entity under the law under which the*
36 *entity is organized or its governing documents.*

37 *(d) A member of a converted worker cooperative company*
38 *remains liable for any and all obligations of the converting entity*
39 *for which the member was personally liable before the conversion,*

1 *but only to the extent that the member was liable for the obligations*
2 *of the converting entity prior to the conversion.*

3 *(e) If the other party to a transaction with the worker*
4 *cooperative company reasonably believes when entering into the*
5 *transaction that the worker cooperative company member is a*
6 *general partner, the worker cooperative company member is liable*
7 *for the obligations incurred by the worker cooperative company*
8 *within 90 days after the conversion takes effect. The worker*
9 *cooperative company member's liability for all other obligations*
10 *of the worker cooperative company incurred after the conversion*
11 *takes effect is that of a worker cooperative company member.*

12 *17809.10. Mergers of worker cooperative companies shall be*
13 *governed by Sections 17809.11 to 17809.19, inclusive.*

14 *17809.11. The following entities may be merged pursuant to*
15 *this article:*

16 *(a) Two or more worker cooperative companies into one worker*
17 *cooperative company.*

18 *(b) One or more worker cooperative companies and one or*
19 *more other business entities into one of those other business entities*
20 *or foreign other business entities.*

21 *(c) One or more worker cooperative companies and one or more*
22 *other business entities or foreign other business entities into one*
23 *worker cooperative company.*

24 *(d) Notwithstanding this section, the merger of any number of*
25 *worker cooperative companies with any number of other business*
26 *entities or foreign other business entities may be effected only if*
27 *the other business entities that are organized in this state are*
28 *authorized by the laws under which they are organized to effect*
29 *the merger, and the following apply:*

30 *(1) If a worker cooperative company is the surviving worker*
31 *cooperative company, the foreign other business entities are not*
32 *prohibited by the laws under which they are organized from*
33 *effecting that merger.*

34 *(2) If a foreign other business entity is the survivor of the*
35 *merger, the laws of the jurisdiction under which the survivor is*
36 *organized authorize that merger. Notwithstanding the first sentence*
37 *of this paragraph, if one or more domestic corporations is also a*
38 *party to the merger described in that sentence, the merger may be*
39 *effected only if, with respect to any foreign other business entity*

1 *that is a corporation, the foreign corporation is authorized by the*
2 *laws under which it is organized to effect that merger.*

3 *17809.12. (a) Each worker cooperative company and other*
4 *business entity that desires to merge shall approve an agreement*
5 *of merger.*

6 *The agreement of merger shall be approved by a two-thirds*
7 *majority of the worker-member class, subject to subdivision (r) of*
8 *Section 17804.07 and the articles or operating agreement.*
9 *Notwithstanding the previous sentence, if the members of any*
10 *constituent worker cooperative company become personally liable*
11 *for any obligations of a constituent worker cooperative company*
12 *or constituent other business entity as a result of the merger, the*
13 *principal terms of the agreement of merger shall be approved by*
14 *all of the members of the constituent worker cooperative company,*
15 *unless the agreement of merger provides that all members shall*
16 *have the dissenters' rights provided in Article 10 (commencing*
17 *with Section 17810.01). The agreement of merger shall be*
18 *approved on behalf of each constituent other business entity by*
19 *those persons required to approve the merger by the laws under*
20 *which it is organized. Other persons, including a parent of a*
21 *constituent worker cooperative company, may be parties to the*
22 *agreement of merger. The agreement of merger shall state all of*
23 *the following:*

24 *(1) The terms and conditions of the merger.*

25 *(2) The name and place of the organization of the surviving*
26 *worker cooperative company or surviving other business entity,*
27 *and of each disappearing worker cooperative company and*
28 *disappearing other business entity, and the agreement of merger*
29 *may change the name of the surviving worker cooperative*
30 *company, the new name may be the same as or similar to the name*
31 *of a disappearing domestic, subject to Section 17801.08.*

32 *(3) The manner of converting the membership interests of each*
33 *of the constituent worker cooperative companies into interests,*
34 *shares, or other securities of the surviving worker cooperative*
35 *company or surviving other business entity, and if worker*
36 *cooperative company interests of any of the constituent worker*
37 *cooperative companies are not to be converted solely into interests,*
38 *shares, or other securities of the surviving worker cooperative*
39 *company or surviving other business entity, the cash, property,*
40 *rights, interests, or securities that the holders of the worker*

1 cooperative company interests are to receive in exchange for the
2 membership interests, the cash, property, rights, interests, or
3 securities that may be in addition to or in lieu of interests, shares,
4 or other securities of the surviving worker cooperative company
5 or surviving other business entity, or that the worker cooperative
6 company interests are canceled without consideration.

7 (4) The amendments to the articles of organization of the
8 surviving worker cooperative company, if applicable, to be effected
9 by the merger, if any.

10 (5) Any other details or provisions that are required by the laws
11 under which any constituent other business entity is organized,
12 including, if a domestic corporation is a party to the merger, as
13 provided in subdivision (b) of Section 1113.

14 (6) Any other details or provisions that are desired, including,
15 without limitation, a provision for the treatment of fractional
16 membership interests.

17 (b) (1) Each membership interest of the same class of any
18 constituent worker cooperative company, other than a membership
19 interest in another constituent worker cooperative company that
20 is being canceled and that is held by a constituent worker
21 cooperative company or its parent or a worker cooperative
22 company of which the constituent worker cooperative company is
23 a parent shall, unless all members of the class consent, be treated
24 equally with respect to any distribution of cash, property, rights,
25 interests, or securities.

26 (2) Notwithstanding paragraph (1), except in a merger of a
27 worker cooperative company with a worker cooperative company
28 that controls at least 90 percent of the membership interests entitled
29 to vote with respect to the merger, the unredeemable membership
30 interests of a constituent worker cooperative company may be
31 converted only into unredeemable interests or securities of the
32 surviving worker cooperative company or other business entity,
33 or a parent if a constituent worker cooperative company or a
34 constituent other business entity or its parent owns, directly or
35 indirectly, prior to the merger, membership interests of another
36 constituent worker cooperative company or interests or securities
37 of a constituent other business entity representing more than 50
38 percent of the interests or securities entitled to vote with respect
39 to the merger of the other constituent worker cooperative company
40 or constituent other business entity or more than 50 percent of the

1 voting power, as defined in Section 194.5, of a constituent other
2 business entity that is a domestic corporation, unless all of the
3 members of the class consent.

4 (3) The provisions of this subdivision do not apply to any
5 transaction if the commissioner has approved the terms and
6 conditions of the transaction and the fairness of those terms
7 pursuant to Section 25142.

8 (c) Notwithstanding its prior approval, an agreement of merger
9 may be amended prior to the filing of the certificate of merger or
10 the agreement of merger, as provided in Section 17809.14, if the
11 amendment is approved by the managers and members of each
12 constituent worker cooperative company in the same manner as
13 required for approval of the original agreement of merger and, if
14 the amendment changes any of the principal terms of the agreement
15 of merger, the amendment is approved by the managers and
16 members of each constituent worker cooperative company in the
17 same manner and to the same extent as required for the approval
18 of the original agreement of merger, and by each of the constituent
19 other business entities.

20 (d) The managers and members of a constituent worker
21 cooperative company may, in their discretion, abandon a merger,
22 subject to the contractual rights, if any, of third parties, including
23 other constituent worker cooperative companies and constituent
24 other business entities, without further approval by the membership
25 interests, at any time before the merger is effective.

26 (e) An agreement of merger approved in accordance with
27 subdivision (a) may do the following:

28 (1) Effect any amendment to the operating agreement of any
29 constituent worker cooperative company.

30 (2) Effect the adoption of a new operating agreement for a
31 constituent worker cooperative company if it is the surviving
32 worker cooperative company in the merger. Any amendment to an
33 operating agreement or adoption of a new operating agreement
34 made pursuant to the foregoing sentence shall be effective at the
35 effective time or date of the merger. Notwithstanding the above
36 provisions of this subdivision, if a greater number of members is
37 required to approve an amendment to the operating agreement of
38 a constituent worker cooperative company than is required to
39 approve the agreement of merger pursuant to subdivision (a), and
40 the number of members that approve the agreement of merger is

1 less than the number of members required to approve an
2 amendment to the operating agreement of the constituent worker
3 cooperative company, any amendment to the operating agreement
4 or adoption of a new operating agreement of that constituent
5 worker cooperative company made pursuant to the first sentence
6 of this subdivision shall be effective only if the agreement of merger
7 provides that all of the members shall have the dissenters' rights
8 provided in Article 10 (commencing with Section 17810.01).

9 (f) The surviving worker cooperative company or surviving
10 other business entity shall keep the agreement of merger at its
11 designated office or at the business address specified in paragraph
12 (5) of subdivision (a) of Section 17809.14, as applicable, and, upon
13 the request of a member of a constituent worker cooperative
14 company or a holder of shares, interests, or other securities of a
15 constituent other business entity, the managers or members of the
16 surviving worker cooperative company or the authorized person
17 of the surviving other business entity shall promptly deliver to the
18 member or the holder of shares, interests, or other securities, at
19 the expense of the surviving worker cooperative company or
20 surviving other business entity, a copy of the agreement of merger.
21 A waiver by a member or holder of shares, interests, or other
22 securities of the rights provided in this subdivision shall be
23 unenforceable.

24 17809.13. Subdivision (b) of Section 17809.12 shall not apply
25 to any transaction if the commissioner has approved the terms and
26 conditions of the transaction and the fairness of such terms and
27 conditions pursuant to Section 25142.

28 17809.14. (a) If the surviving entity is a worker cooperative
29 company or an other business entity, other than a corporation in
30 a merger in which a domestic corporation is a constituent party,
31 after approval of a merger by the constituent worker cooperative
32 companies and any constituent other business entities, the
33 constituent worker cooperative companies and constituent other
34 business entities shall file a certificate of merger in the office of,
35 and on a form prescribed by, the Secretary of State. The certificate
36 of merger shall be executed and acknowledged by each domestic
37 constituent worker cooperative company by all managers, or if
38 none, all members unless a lesser number is provided in the articles
39 of organization or operating agreement of the domestic constituent
40 worker cooperative company and by each foreign constituent

1 worker cooperative company by one or more managers, or if none,
2 members, and by each constituent other business entity by those
3 persons required to execute the certificate of merger by the laws
4 under which the constituent other business entity is organized. The
5 certificate of merger shall set forth all of the following:

6 (1) The names and the Secretary of State's file numbers, if any,
7 of each of the constituent worker cooperative companies and
8 constituent other business entities, separately identifying the
9 disappearing worker cooperative companies and disappearing
10 other business entities and the surviving worker cooperative
11 company or surviving other business entity.

12 (2) If a vote of the members was required pursuant to Section
13 17809.12, a statement setting forth the total number of outstanding
14 interests of each class entitled to vote on the merger and that the
15 principal terms of the agreement of merger were approved by a
16 vote of the number of interests of each class that equaled or
17 exceeded the vote required, specifying each class entitled to vote
18 and the percentage vote required of each class.

19 (3) If the surviving entity is a worker cooperative company and
20 not an other business entity, any change required to the information
21 set forth in the articles of organization of the surviving worker
22 cooperative company resulting from the merger, including any
23 change in the name of the surviving worker cooperative company
24 resulting from the merger. The filing of a certificate of merger
25 setting forth any such changes to the articles of organization of
26 the surviving worker cooperative company shall have the effect of
27 the filing of a certificate of amendment by the surviving worker
28 cooperative company, and the surviving worker cooperative
29 company need not file an amendment under Section 17802.02 to
30 reflect those changes.

31 (4) The future effective date, that shall be a date certain not
32 more than 90 days subsequent to the date of filing of the merger,
33 if the merger is not to be effective upon the filing of the certificate
34 of merger with the office of the Secretary of State.

35 (5) If the surviving entity is an other business entity or a foreign
36 limited liability company, the full name of the entity, type of entity,
37 legal jurisdiction where the entity was organized and by whose
38 laws its internal affairs are governed, and the address of the
39 principal place of business of the entity.

1 (6) Any other information required to be stated in the certificate
2 of merger by the laws where each constituent other business entity
3 is organized, including if a domestic corporation is a party to the
4 merger, as required under paragraph (2) of subdivision (g) of
5 Section 1113. If the surviving entity is a foreign limited liability
6 company in a merger where a domestic corporation is a
7 disappearing other business entity, a copy of the agreement of
8 merger and attachments as required under paragraph (1) of
9 subdivision (g) of Section 1113 shall be filed at the same time as
10 the filing of the certificate of merger.

11 (b) If the surviving entity is a domestic corporation or a foreign
12 corporation in a merger that a domestic corporation is a
13 constituent party, after approval of the merger by the constituent
14 worker cooperative companies and constituent other business
15 entities, the surviving corporation shall file in the office of the
16 Secretary of State a copy of the agreement of merger and
17 attachments required under paragraph (1) of subdivision (g) of
18 Section 1113. The certificate of merger shall be executed and
19 acknowledged by each domestic constituent worker cooperative
20 company by all general members, unless a lesser number is
21 provided in the articles of organization of the worker cooperative
22 company of the domestic constituent worker cooperative company.

23 (c) A certificate of merger or the agreement of merger, as is
24 applicable under subdivisions (a) and (b), shall have the effect of
25 the filing of a certificate of cancellation for each disappearing
26 worker cooperative company, and no disappearing worker
27 cooperative company need take any action under Article 7
28 (commencing with Section 17807.01) concerning dissolution as a
29 result of the merger.

30 (d) If a disappearing other entity is a foreign corporation
31 qualified to transact intrastate business in this state, the filing of
32 the certificate of merger or agreement of merger, as is applicable,
33 by the foreign corporation shall automatically surrender its right
34 to transact intrastate business.

35 17809.15. (a) Unless a future effective date is provided in a
36 certificate of merger or the agreement of merger, if an agreement
37 of merger is required to be filed under Section 17809.14, in which
38 event the merger shall be effective at that future effective date, a
39 merger shall be effective upon the filing of the certificate of merger

1 or the agreement of merger, as is applicable, in the office of the
2 Secretary of State.

3 (b) (1) For all purposes, a copy of the certificate of merger
4 duly certified by the Secretary of State is conclusive evidence of
5 the merger of the constituent worker cooperative companies, either
6 by themselves or together with constituent other business entities,
7 into the surviving other business entity, or the constituent worker
8 cooperative companies or the constituent other business entities,
9 or both, into the surviving worker cooperative company.

10 (2) In a merger in which the surviving entity is a corporation
11 in a merger in which a domestic corporation and a domestic
12 worker cooperative company are parties to the merger, a copy of
13 an agreement of merger certified on or after the effective date by
14 an official having custody thereof has the same force in evidence
15 as the original and, except as against the state, is conclusive
16 evidence of the performance of all conditions precedent to the
17 merger, the existence on the effective date of the surviving
18 corporation, and the performance of the conditions necessary to
19 the adoption of any amendment to the articles of incorporation of
20 the surviving corporation, if applicable, contained in the agreement
21 of merger.

22 17809.16. (a) Upon a merger of worker cooperative companies
23 or worker cooperative companies and other business entities
24 pursuant to this article, the separate existence of the disappearing
25 worker cooperative companies and disappearing other business
26 entities ceases and the surviving worker cooperative company or
27 surviving other business entity shall succeed, without other
28 transfer, act or deed, to all the rights and property, whether real,
29 personal, or mixed, of each of the disappearing worker cooperative
30 companies and disappearing other business entities, and shall be
31 subject to all the debts and liabilities of each in the same manner
32 as if the surviving worker cooperative company or surviving other
33 business entity had itself incurred them.

34 (b) All rights of creditors and all liens upon the property of each
35 of the constituent worker cooperative companies and constituent
36 other business entities shall be preserved unimpaired and may be
37 enforced against the surviving worker cooperative company or
38 the surviving other business entity to the same extent as if the debt,
39 liability, or duty which gave rise to that lien had been incurred or
40 contracted by the surviving worker cooperative company or the

1 *surviving other business entity, provided that such liens upon the*
2 *property of a disappearing worker cooperative company or*
3 *disappearing other business entity shall be limited to the property*
4 *affected thereby immediately prior to the time the merger is*
5 *effective.*

6 *(c) Any action or proceeding pending by or against any*
7 *disappearing worker cooperative company or disappearing other*
8 *business entity may be prosecuted to judgment, which shall bind*
9 *the surviving worker cooperative company or surviving other*
10 *business entity, or the surviving worker cooperative company or*
11 *surviving other business entity may be proceeded against or be*
12 *substituted in the place of the disappearing worker cooperative*
13 *company or disappearing other business entity.*

14 *(d) Nothing in this article is intended to affect the liability a*
15 *member of a disappearing worker cooperative company may have*
16 *in connection with the debts and liabilities of the disappearing*
17 *worker cooperative company existing prior to the time the merger*
18 *is effective.*

19 *17809.17. (a) If the surviving entity is a domestic worker*
20 *cooperative company or a domestic other business entity, the*
21 *merger proceedings with respect to that worker cooperative*
22 *company or other business entity and any domestic disappearing*
23 *worker cooperative company shall conform to the provisions of*
24 *this article governing the merger of domestic worker cooperative*
25 *companies, but if the surviving entity is a foreign limited liability*
26 *company or a foreign other business entity, then, subject to the*
27 *requirements of subdivision (d) and Article 10 (commencing with*
28 *Section 17810.01) and, with respect to any domestic constituent*
29 *corporation, Section 1113, Chapter 12 (commencing with Section*
30 *1200), and Chapter 13 (commencing with Section 1300) of Division*
31 *1 of Title 1 and, with respect to any domestic constituent limited*
32 *partnership, Article 11.5 (commencing with Section 15911.20) of*
33 *Chapter 5.5 of Title 2, the merger proceedings may be in*
34 *accordance with the laws of the state or place of organization of*
35 *the surviving worker cooperative company or surviving other*
36 *business entity.*

37 *(b) If the surviving entity is a domestic worker cooperative*
38 *company or domestic other business entity, other than a domestic*
39 *corporation, the certificate of merger shall be filed as provided in*
40 *subdivision (a) of Section 17809.14, and thereupon, subject to*

1 subdivision (a) of Section 17809.15, the merger shall be effective
2 as to each domestic constituent worker cooperative company and
3 domestic constituent other business entity. If the surviving entity
4 is a domestic corporation, the agreement of merger with
5 attachments shall be filed pursuant to subdivision (b) of Section
6 17809.14, and thereupon, subject to subdivision (a) of Section
7 17809.15, the merger shall be effective as to each domestic
8 constituent worker cooperative company and domestic constituent
9 other business entity unless another effective date is provided
10 pursuant to Article 10 (commencing with Section 17810.01), with
11 respect to any constituent corporation or constituent worker
12 cooperative company.

13 (c) If the surviving entity is a foreign limited liability company
14 or foreign other business entity, the merger shall become effective
15 in accordance with the laws of the jurisdiction where the surviving
16 worker cooperative company or surviving other business entity is
17 organized, but shall be effective as to any domestic disappearing
18 worker cooperative company as of the time of effectiveness in the
19 foreign jurisdiction upon the filing in this state of a certificate of
20 merger or agreement of merger pursuant to Section 17809.14.

21 (d) If a merger described in subdivision (c) or (d) also includes
22 a foreign disappearing worker cooperative company previously
23 registered for the transaction of intrastate business in this state
24 pursuant to Section 17809.02, the filing of the certificate of merger
25 or agreement of merger, as is applicable under Section 17809.14,
26 automatically has the effect of a cancellation of registration for
27 that foreign limited liability company pursuant to Section 17809.07
28 without the necessity of the filing of a certificate of cancellation.

29 (e) The provisions of subdivision (b) of Section 17809.12 and
30 Article 10 (commencing with Section 17810.01) apply to the rights
31 of the members of any of the constituent worker cooperative
32 companies that are domestic worker cooperative companies and
33 of any domestic worker cooperative company that is a parent of
34 any foreign constituent worker cooperative company.

35 (f) If the surviving entity is a foreign limited liability company
36 or foreign other business entity, the surviving entity shall file the
37 following with the Secretary of State:

38 (1) An agreement that it may be served in this state in a
39 proceeding for the enforcement of an obligation of any constituent
40 entity and in a proceeding to enforce the rights of any holder of a

1 *dissenting interest or dissenting shares in a constituent domestic*
2 *worker cooperative company or domestic other business entity.*

3 (2) *An irrevocable appointment of the Secretary of State as its*
4 *agent for service of process, and an address to which process may*
5 *be forwarded.*

6 (3) *An agreement that it will promptly pay the holder of any*
7 *dissenting interest or dissenting share in a constituent domestic*
8 *worker cooperative company or domestic other business entity the*
9 *amount to which that person is entitled under the laws of this state.*

10 17809.18. *Whenever a domestic or other business entity having*
11 *any real property in this state merges with another worker*
12 *cooperative company or other business entity pursuant to the laws*
13 *of this state or of the state or place where any constituent worker*
14 *cooperative company or constituent other business entity was*
15 *organized, and the laws of the state or place of organization,*
16 *including this state of any disappearing worker cooperative*
17 *company or disappearing other business entity provide*
18 *substantially that the making and filing of the agreement of merger*
19 *or certificate of merger vests in the surviving worker cooperative*
20 *company or surviving other business entity all the real property*
21 *of any disappearing worker cooperative company and disappearing*
22 *other business entity, the filing for record in the office of the county*
23 *recorder of any county in this state where any of the real property*
24 *of the disappearing worker cooperative company or disappearing*
25 *other business entity is located of either of the following shall*
26 *evidence record ownership in the surviving worker cooperative*
27 *company or surviving other business entity of all interest of the*
28 *disappearing worker cooperative company or disappearing other*
29 *business entity in and to the real property located in that county*
30 *in which both of the following occur:*

31 (a) *A certificate of merger certified by the Secretary of State,*
32 *or other certificate prescribed by the Secretary of State.*

33 (b) *A copy of the agreement of merger or certificate of merger,*
34 *certified by the Secretary of State or an authorized public official*
35 *of the state or place pursuant to the laws of which the merger is*
36 *effected.*

37 17809.19. (a) *Upon a merger pursuant to this article, a*
38 *surviving domestic or other business entity shall be deemed to*
39 *have assumed the liability of each disappearing domestic or other*
40 *business entity that is taxed under Part 10 (commencing with*

1 Section 17001) or Part 11 (commencing with Section 23001) of
2 Division 2 of the Revenue and Taxation Code for the following:

3 (1) To prepare and file, or to cause to be prepared and filed,
4 tax and information returns otherwise required of that disappearing
5 entity as specified in Chapter 2 (commencing with Section 18501)
6 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

7 (2) To pay any tax liability determined to be due.

8 (b) If the surviving entity is a domestic worker cooperative
9 company, domestic corporation, or registered worker cooperative
10 partnership or a foreign limited liability company, foreign limited
11 liability partnership, or foreign corporation that is registered or
12 qualified to do business in this state, the Secretary of State shall
13 notify the Franchise Tax Board of the merger.

14 15 Article 10. Dissenters' Rights

16
17 17810.01. (a) For purposes of this article, "reorganization"
18 refers to any of the following:

19 (1) A conversion pursuant to Article 9 (commencing with Section
20 17809.01).

21 (2) A merger pursuant to Article 9 (commencing with Section
22 17809.01).

23 (3) The acquisition by one worker cooperative company in
24 exchange, in whole or in part, for its membership interests, or the
25 membership interests or equity securities of a worker cooperative
26 company or other business entity that is in control of the acquiring
27 worker cooperative company, of membership interests or equity
28 securities of another worker cooperative company or other business
29 entity if, immediately after the acquisition, the acquiring worker
30 cooperative company has control of the other worker cooperative
31 company or other business entity.

32 (4) The acquisition by one worker cooperative company in
33 exchange, in whole or in part, for its membership interests, or the
34 membership interests or equity securities of a worker cooperative
35 company or other business entity which is in control of the
36 acquiring worker cooperative company, or for its debt securities,
37 or debt securities of a worker cooperative company or other
38 business entity which is in control of the acquiring worker
39 cooperative company, that are not adequately secured and that
40 have a maturity date in excess of five years after the consummation

1 of the acquisition, or both, of all or substantially all of the assets
2 of another worker cooperative company or other business entity.

3 (b) For purposes of this article, “control” means the possession,
4 direct or indirect, of the power to direct or cause the direction of
5 the management and policies of a worker cooperative company
6 or other business entity.

7 17810.02. (a) If the approval of outstanding membership
8 interests is required for a worker cooperative company to
9 participate in a reorganization, pursuant to the worker cooperative
10 company agreement, or otherwise, then each member of the worker
11 cooperative company holding those interests may, by complying
12 with this article, require the worker cooperative company to
13 purchase for cash, at its fair market value, the interest owned by
14 the member in the worker cooperative company, if the interest is
15 a dissenting interest as defined in subdivision (b). The fair market
16 value shall be determined as of the day before the first
17 announcement of the terms of the proposed reorganization,
18 excluding any appreciation or depreciation in consequence of the
19 proposed reorganization.

20 (b) As used in this article, “dissenting interest” means the
21 interest of a member that satisfies all of the following conditions:

22 (1) Either:

23 (A) Was not, immediately prior to the reorganization, either (i)
24 listed on any national securities exchange certified by the
25 Commissioner of Corporations under subdivision (o) of Section
26 25100, or (ii) listed on the list of OTC margin stocks issued by the
27 Board of Governors of the Federal Reserve System, provided that
28 in either instance the worker cooperative company whose
29 outstanding interests are so listed provides, in its notice to members
30 requesting their approval of the proposed reorganization, a
31 summary of the provisions of this section and Sections 17810.03,
32 17810.04, 17810.05, and 17810.06.

33 (B) If the interest is of a class of interests listed as described in
34 clause (i) or (ii) of subparagraph (A), demands for payment are
35 filed with respect to 5 percent or more of the outstanding interests
36 of that class.

37 (2) Was outstanding on the date for the determination of
38 members entitled to vote on the reorganization.

39 (3) Either:

40 (A) Was not voted in favor of the reorganization.

1 (B) If the interest is described in clause (i) or (ii) of
2 subparagraph (A) of paragraph (1), was voted against the
3 reorganization; provided, however, that subparagraph (A) rather
4 than this subparagraph applies in any event where the approval
5 for the proposed reorganization is sought by written consent rather
6 than at a meeting.

7 (4) The member has demanded that the interest be purchased
8 by the worker cooperative company at its fair market value in
9 accordance with Section 17810.03.

10 (5) The member has submitted the interest for endorsement, if
11 applicable, in accordance with Section 17810.04.

12 (c) As used in this article, “dissenting member” means the
13 recordholder of a dissenting interest, and includes an assignee of
14 record of that interest.

15 17810.03. (a) If members have a right under Section 17810.02,
16 subject to compliance with paragraphs (4) and (5) of subdivision
17 (b) of Section 17810.02, to require the worker cooperative company
18 to purchase their membership interests for cash, the worker
19 cooperative company shall mail to each member a notice of the
20 approval of the reorganization by the requisite vote or consent of
21 the members, within 10 days after the date of the approval,
22 accompanied by a copy of this section and Sections 17810.01,
23 17810.02, 17810.04, and 17810.05, a statement of the price
24 determined by the worker cooperative company to represent the
25 fair market value of its outstanding interests, and a brief
26 description of the procedure to be followed if the member desires
27 to exercise the member’s rights under those sections. The statement
28 of price constitutes an offer by the worker cooperative company
29 to purchase at the price stated any dissenting interests as defined
30 in subdivision (b) of Section 17810.02, unless they lose their status
31 as dissenting interests under Section 17810.11.

32 (b) Any member who has a right to require the worker
33 cooperative company to purchase the member’s interest for cash
34 under Section 17810.02, subject to compliance with paragraphs
35 (4) and (5) of subdivision (b) of Section 17810.02, and who desires
36 the worker cooperative company to purchase that interest, shall
37 make written demand upon the worker cooperative company for
38 the purchase of that interest and the payment to the member in
39 cash of its fair market value. The demand is not effective for any
40 purpose unless it is received by the worker cooperative company

1 or any transfer agent thereof (1) in the case of interests described
2 in clause (i) or (ii) of subparagraph (A) of paragraph (1) of
3 subdivision (b) of Section 17810.02, not later than the date of the
4 members' meeting to vote upon the reorganization, or (2) in any
5 other case, within 30 days after the date on which notice of the
6 approval of the reorganization by the requisite vote or consent of
7 the members is mailed by the worker cooperative company to the
8 members.

9 (c) The demand shall state the number or amount of the
10 member's interest in the worker cooperative company and shall
11 contain a statement of what the member claims to be the fair market
12 value of that interest on the day before the announcement of the
13 proposed reorganization. The statement of fair market value
14 constitutes an offer by the member to sell the interest at such price.

15 17810.04. Within 30 days after the date on which notice of the
16 approval of the outstanding interests of the worker cooperative
17 company is mailed to the member pursuant to subdivision (a) of
18 Section 17810.03, the member shall submit to the worker
19 cooperative company at its principal office or at the office of any
20 transfer agent thereof, if the interest is evidenced by a certificate,
21 the member's certificate representing the interest which the
22 member demands that the worker cooperative company purchase,
23 to be stamped or endorsed with a statement that the interest is a
24 dissenting interest or to be exchanged for certificates of
25 appropriate denominations so stamped or endorsed, or if the
26 interest is not evidenced by a certificate, written notice of the
27 number or amount of interest which the member demands that the
28 worker cooperative company purchase. Upon subsequent transfers
29 of the dissenting interest on the books of the worker cooperative
30 company, the new certificates or other written statement issued
31 therefor shall bear a like statement, together with the name of the
32 original holder of the dissenting interest.

33 17810.05. (a) If the worker cooperative company and the
34 dissenting member agree that the member's interest is a dissenting
35 interest and agree upon the price to be paid for the dissenting
36 interest, the dissenting member is entitled to the agreed price with
37 interest thereon at the legal rate on judgments from the date of
38 consummation of the reorganization. All agreements fixing the
39 fair market value of any dissenting member's interest as between

1 *the worker cooperative company and that member shall be in*
2 *writing and filed in the records of the worker cooperative company.*

3 *(b) Subject to the provisions of Section 17810.08, payment of*
4 *the fair market value for a dissenting interest shall be made within*
5 *30 days after the amount has been agreed to or within 30 days*
6 *after any statutory or contractual conditions to the reorganization*
7 *are satisfied, whichever is later, and in the case of dissenting*
8 *interests evidenced by certificates of interest, subject to surrender*
9 *of such certificates of interest, unless provided otherwise by*
10 *agreement.*

11 *17810.06. (a) If the worker cooperative company denies that*
12 *a membership interest is a dissenting interest, or the worker*
13 *cooperative company and a dissenting member fail to agree upon*
14 *the fair market value of a dissenting interest, then the member or*
15 *any interested worker cooperative company, within six months*
16 *after the date when notice of the approval of the reorganization*
17 *by the requisite vote or consent of the members was mailed to the*
18 *member, but not later, may file a complaint in the superior court*
19 *of the proper county praying the court to determine whether the*
20 *interest is a dissenting interest, or the fair market value of the*
21 *dissenting interest, or both, or may intervene in any action pending*
22 *on such a complaint.*

23 *(b) Two or more dissenting members may join as plaintiffs or*
24 *be joined as defendants in any of those actions and two or more*
25 *of those actions may be consolidated.*

26 *(c) On the trial of the action, the court shall determine the issues.*
27 *If the status of the membership interest as a dissenting interest is*
28 *in issue, the court shall first determine that issue. If the fair market*
29 *value of the dissenting interest is in issue, the court shall determine,*
30 *or shall appoint one or more impartial appraisers to determine,*
31 *the fair market value of the dissenting interest.*

32 *17810.07. (a) If the court appoints an appraiser or appraisers,*
33 *they shall proceed forthwith to determine the fair market value*
34 *per interest of the outstanding membership interests of the worker*
35 *cooperative company, by class if necessary. Within the time fixed*
36 *by the court, the appraisers, or a majority of them, shall make and*
37 *file a report in the office of the clerk of the court. Thereupon, on*
38 *the motion of any party, the report shall be submitted to the court*
39 *and considered on such additional evidence as the court considers*

1 *relevant. If the court finds the report reasonable, the court may*
2 *confirm it.*

3 *(b) If a majority of the appraisers appointed fails to make and*
4 *file a report within 30 days from the date of their appointment, or*
5 *within a further time as may be allowed by the court, or the report*
6 *is not confirmed by the court, the court shall determine the fair*
7 *market value per interest of the outstanding membership interests*
8 *of the worker cooperative company, by class if necessary.*

9 *(c) Subject to Section 17810.08, judgment shall be rendered*
10 *against the worker cooperative company for payment of an amount*
11 *equal to the fair market value, as determined by the court, of each*
12 *dissenting interest that any dissenting member who is a party, or*
13 *has intervened, is entitled to require the worker cooperative*
14 *company to purchase, with interest thereon at the legal rate on*
15 *judgments from the date of consummation of the reorganization.*

16 *(d) Any of those judgments shall be payable forthwith, provided,*
17 *however, that with respect to membership interests evidenced by*
18 *transferable certificates of interest, only upon the endorsement*
19 *and delivery to the worker cooperative company of those*
20 *certificates representing the interests described in the judgment.*
21 *Any party may appeal from the judgment.*

22 *(e) The costs of the action, including reasonable compensation*
23 *for the appraisers, to be fixed by the court, shall be assessed or*
24 *apportioned as the court considers equitable, but, if the appraisal*
25 *exceeds the price offered by the worker cooperative company, the*
26 *worker cooperative company shall pay the costs, including, in the*
27 *discretion of the court, if the value awarded by the court for the*
28 *dissenting interest is more than 125 percent of the price offered*
29 *by the worker cooperative company under subdivision (a) of*
30 *Section 17810.02, attorney's fees and fees of expert witnesses.*

31 *17810.08. To the extent that the payment to dissenting members*
32 *of the fair market value of their dissenting interests would require*
33 *the dissenting members to return payment or a portion of the*
34 *payment by reason of Section 17810.09 or the Uniform Fraudulent*
35 *Transfer Act (Chapter 1 (commencing with Section 3439) of Title*
36 *2 of Part 2 of Division 4 of the Civil Code), then that payment or*
37 *portion thereof shall not be made and the dissenting members shall*
38 *become creditors of the worker cooperative company for the*
39 *amount not paid, together with interest thereon at the legal rate*
40 *on judgments until the date of payment, but subordinate to all*

1 *other creditors in any proceeding relating to the winding up and*
2 *dissolution of the worker cooperative company, such debt to be*
3 *payable when permissible.*

4 *17810.09. Any cash distributions made by a worker cooperative*
5 *company to a dissenting member after the date of consummation*
6 *of the reorganization, but prior to any payment by the worker*
7 *cooperative company for that dissenting member's interest, shall*
8 *be credited against the total amount to be paid by the worker*
9 *cooperative company for such dissenting interest.*

10 *17810.10. Except as expressly limited by this article, dissenting*
11 *members shall continue to have all the rights and privileges*
12 *incident to their interests immediately prior to the reorganization,*
13 *including worker cooperative, until payment by the worker*
14 *cooperative company for their dissenting interests. A dissenting*
15 *member may not withdraw a demand for payment unless the worker*
16 *cooperative company consents thereto.*

17 *17810.11. A dissenting interest loses its status as a dissenting*
18 *interest and the holder thereof ceases to be a dissenting member*
19 *and ceases to be entitled to require the worker cooperative*
20 *company to purchase the interest upon the happening of any of*
21 *the following:*

22 *(a) The worker cooperative company abandons the*
23 *reorganization.*

24 *Upon abandonment of the reorganization, the worker cooperative*
25 *company shall pay, on demand, to any dissenting member who*
26 *has initiated proceeding in good faith under this article, all*
27 *reasonable expenses incurred in such proceedings and reasonable*
28 *attorney's fees.*

29 *(b) The interest is transferred prior to its submission for*
30 *endorsement in accordance with Section 17810.04.*

31 *(c) The dissenting member and the worker cooperative company*
32 *do not agree upon the status of the interest as a dissenting interest*
33 *or upon the purchase price of the dissenting interest, and neither*
34 *files a complaint nor intervenes in a pending action, as provided*
35 *in Section 17810.06, within six months after the date upon which*
36 *notice of the approval of the reorganization by the requisite vote*
37 *or consent of members was mailed to the member.*

38 *(d) The dissenting member, with the consent of the worker*
39 *cooperative company, withdraws the member's demand for*
40 *purchase of the dissenting interest.*

1 17810.12. *If litigation is instituted to test the sufficiency or*
2 *regularity of the vote or consent of the members in authorizing a*
3 *reorganization, any proceedings under Sections 17810.06 and*
4 *17810.07 shall be suspended until final determination of that*
5 *litigation.*

6 17810.13. (a) *This article applies to the following:*

7 (1) *A domestic worker cooperative company formed on or after*
8 *January 1, 2015.*

9 (2) *A worker cooperative company if the operating agreement*
10 *so provides or if all managers and a majority of the members, if*
11 *it is a manager-managed worker cooperative company, or a*
12 *majority, if it is a member-managed worker cooperative company,*
13 *determine that this article shall apply.*

14 (b) *This article does not apply to membership interests governed*
15 *by operating agreements whose terms and provisions specifically*
16 *set forth the amount to be paid in respect of those interests in the*
17 *event of a reorganization of the worker cooperative company, or*
18 *to any worker cooperative company with 35 or fewer members if*
19 *all the members have waived the application of this article in*
20 *writing, whether in an operating agreement or otherwise, provided*
21 *that if, at the time of the reorganization, the worker cooperative*
22 *company had more than 35 members, any waiver shall be*
23 *ineffective as to that reorganization.*

24 17810.14. (a) *No member of a worker cooperative company*
25 *who has a right under this article to demand payment of cash for*
26 *the interest owned by a member in a worker cooperative company*
27 *shall have any right at law or in equity to attack the validity of the*
28 *reorganization, or to have the reorganization set aside or*
29 *rescinded, except in an action to test whether the vote or consent*
30 *of members required to authorize or approve the reorganization*
31 *has been obtained in accordance with the procedures established*
32 *therefor by the operating agreement of the worker cooperative*
33 *company.*

34 (b) *If one of the parties to a reorganization is directly or*
35 *indirectly controlled by, or under common control with, another*
36 *party to the reorganization, subdivision (a) shall not apply to any*
37 *member of the controlled party who has not demanded payment*
38 *of cash for the member's interest pursuant to this article; but if*
39 *the member institutes any action to attack the validity of the*
40 *reorganization or to have the reorganization set aside or rescinded,*

1 *the member shall not thereafter have any right to demand payment*
2 *of cash for the member's interest pursuant to this article.*

3 *(c) If one of the parties to a reorganization is directly or*
4 *indirectly controlled by, or under common control with, another*
5 *party to the reorganization, then, in any action to attack the validity*
6 *of the reorganization or to have the reorganization set aside or*
7 *rescinded, both of the following apply:*

8 *(1) A party to a reorganization that controls another party to*
9 *a reorganization shall have the burden of proving that the*
10 *transaction is just and reasonable as to the members of the*
11 *controlled party.*

12 *(2) A person that controls two or more parties to a*
13 *reorganization shall have the burden of proving that the*
14 *transaction is just and reasonable as to the members of any party*
15 *so controlled.*

16 *(d) Subdivisions (b) and (c) shall not apply if a majority of the*
17 *members other than members who are directly or indirectly*
18 *controlled by, or under common control with, another party to the*
19 *reorganization approve or consent to the reorganization.*

20 *(e) This section shall not prevent a member of a worker*
21 *cooperative company that is a party to a reorganization from*
22 *bringing an action against a manager of the worker cooperative*
23 *company, the worker cooperative company, or any person*
24 *controlling a manager at law or in equity as to any matters,*
25 *including, without limitation, an action for breach of fiduciary*
26 *obligation or fraud, other than to attack the validity of the*
27 *reorganization or to have the reorganization set aside or rescinded.*

28
29 *Article 11. Class Provisions*
30

31 *17811.01. The articles of organization or the operating*
32 *agreement may provide for the creation of classes of members*
33 *having those relative rights, powers, and duties as the articles of*
34 *organization or operating agreement may provide, including rights,*
35 *powers, and duties senior to other classes of members.*
36

37 *Article 12. Miscellaneous Provisions*
38

39 *17812.05. This division, or any part, chapter, article, or section*
40 *thereof, may at any time be amended or repealed.*

1 17812.06. (a) *If a manager or member required by this division*
2 *to execute or file any document fails, after demand, to do so within*
3 *a reasonable time or refuses to do so, any other manager or*
4 *member, or any person appointed by a court of competent*
5 *jurisdiction, may prepare, execute, and file that document with the*
6 *Secretary of State.*

7 (b) *If there is any dispute concerning the filing of a document,*
8 *or the failure to file a document, any manager or member may*
9 *petition the superior court to direct the execution of the document.*

10 (c) *If the court finds that it is proper for the document to be*
11 *executed and that any person so designated has failed or refused*
12 *to execute the document, or if the court determines that any*
13 *document should be filed, it shall order a party to file the document,*
14 *on a form prescribed by the Secretary of State if appropriate, as*
15 *ordered by the court.*

16 (d) *In any action under this section, if the court finds the failure*
17 *of the manager or member to comply with the requirement to file*
18 *any document to have been without justification, the court may*
19 *award an amount sufficient to reimburse the managers or members*
20 *bringing the action for the reasonable expenses incurred by them,*
21 *including attorney's fees, in connection with the action or*
22 *proceeding.*

23 (e) *Any member who is not a manager, or any person filing any*
24 *document under this section, shall state the statutory authority*
25 *after the signature on the appropriate document.*

26 17812.07. (a) *Every worker cooperative company that neglects,*
27 *fails, or refuses to keep or cause to be kept or maintained the*
28 *documents, books, and records required by Section 17801.13 to*
29 *be kept or maintained shall be subject to a penalty of twenty-five*
30 *dollars (\$25) for each day that the failure or refusal continues,*
31 *beginning 30 days after receipt of written request by any member*
32 *that the duty be performed, up to a maximum of one thousand five*
33 *hundred dollars (\$1,500). The penalty shall be paid to the member*
34 *or members jointly making the request for performance of the duty*
35 *and damaged by the neglect, failure, or refusal, if suit therefor is*
36 *commenced within 90 days after the written request is made; but*
37 *the maximum daily penalty because of failure to comply with any*
38 *number of separate requests made on any one day or for the same*
39 *act shall be two hundred fifty dollars (\$250).*

1 (b) Upon the failure of a worker cooperative company, or a
2 foreign limited liability company registered to transact intrastate
3 business in this state, to file the statement required by Section
4 17802.09, the Secretary of State shall provide a notice of that
5 delinquency to the worker cooperative company. The notice shall
6 also contain information concerning the application of this section,
7 advise the worker cooperative company of the penalty imposed by
8 this subdivision for failure to timely file the required statement
9 after notice of delinquency has been provided by the Secretary of
10 State, and shall advise the worker cooperative company of its right
11 to request relief from the Secretary of State because of reasonable
12 cause or unusual circumstances that justify the failure to file. If,
13 within 60 days after providing notice of the delinquency, a
14 statement pursuant to Section 17802.09 has not been filed by the
15 worker cooperative company, the worker cooperative company
16 shall be subject to a penalty of two hundred fifty dollars (\$250).

17 17812.08. Any penalty prescribed by Section 17812.07 shall
18 be in addition to any remedy by injunction or action for damages
19 or by writ of mandate for the nonperformance of acts and duties
20 enjoined by law upon the worker cooperative company or its
21 managers, including, without limitation, the remedies provided in
22 subdivisions (f) and (g) of Section 17804.10. The court in which
23 an action for any penalty is brought may reduce, remit, or suspend
24 the penalty on any terms and conditions as it may deem reasonable
25 when it is made to appear that the neglect, failure, or refusal was
26 inadvertent or excusable.

27 17812.09. (a) Upon the failure of a worker cooperative
28 company to file the statement required by Section 17802.09, the
29 Secretary of State shall provide a notice of the delinquency to the
30 worker cooperative company. The notice shall also contain
31 information concerning the application of this section, advise the
32 worker cooperative company of the penalty imposed by Section
33 19141 of the Revenue and Taxation Code for failure to timely file
34 the required statement after notice of delinquency has been mailed
35 by the Secretary of State, and shall advise the worker cooperative
36 company of its right to request relief from the Secretary of State
37 because of reasonable cause or unusual circumstances that justify
38 such failure to file. If, within 60 days after providing notice of the
39 delinquency, a statement pursuant to Section 17802.09 has not
40 been filed by the worker cooperative company, the Secretary of

1 *State shall certify the name of such worker cooperative company*
2 *to the Franchise Tax Board.*

3 *(b) Upon certification pursuant to subdivision (a), the Franchise*
4 *Tax Board shall assess against the worker cooperative company*
5 *the penalty provided in Section 19141 of the Revenue and Taxation*
6 *Code.*

7 *(c) The penalty provided by Section 19141 of the Revenue and*
8 *Taxation Code shall not apply to a worker cooperative company*
9 *that on or prior to the date of certification pursuant to subdivision*
10 *(a) has been canceled, has been merged into another worker*
11 *cooperative company, other business entity, foreign other business*
12 *entity, or has converted into another foreign business entity, foreign*
13 *other business entity.*

14 *(d) The penalty herein provided shall not apply and the*
15 *Secretary of State need not provide notice of the delinquency to a*
16 *worker cooperative company the powers, rights, and privileges of*
17 *which have been suspended by the Franchise Tax Board pursuant*
18 *to Section 23301, 23301.5, or 23775 of the Revenue and Taxation*
19 *Code on or prior to, and remain suspended on, the last day of the*
20 *filing period pursuant to Section 17802.09. The Secretary of State*
21 *need not provide notice of the filing requirement pursuant to*
22 *Section 17802.09 to a worker cooperative company the powers,*
23 *rights, and privileges of which have been so suspended by the*
24 *Franchise Tax Board on or prior to, and remain suspended on,*
25 *the day the Secretary of State prepares the notice for sending.*

26 *(e) If, after certification pursuant to subdivision (a) the Secretary*
27 *of State finds (1) the required statement was filed or the required*
28 *fee was paid before the expiration of the 60-day period after*
29 *providing notice of the delinquency, or (2) the failure to provide*
30 *notice of delinquency was due to an error of the Secretary of State,*
31 *the Secretary of State shall promptly decertify the name of the*
32 *worker cooperative company to the Franchise Tax Board. The*
33 *Franchise Tax Board shall then promptly abate any penalty*
34 *assessed against the worker cooperative company pursuant to*
35 *Section 19141 of the Revenue and Taxation Code.*

36 *(f) If the Secretary of State determines that the failure of a*
37 *worker cooperative company to file the statement required by*
38 *Section 17802.09 is excusable because of reasonable cause or*
39 *unusual circumstances that justify such failure, the Secretary of*
40 *State may waive the penalty imposed by this section and by Section*

1 19141 of the Revenue and Taxation Code, in which case the
2 Secretary of State shall not certify the name of the worker
3 cooperative company to the Franchise Tax Board, or if already
4 certified, the Secretary of State shall promptly decertify the name
5 of the worker cooperative company.

6 17812.10. (a) A worker cooperative company that (1) fails to
7 file a statement pursuant to Section 17802.09 for an applicable
8 filing period, (2) has not filed a statement pursuant to Section
9 17802.09 during the preceding 24 months, and (3) was certified
10 for penalty pursuant to Section 17812.09 for the same filing period,
11 shall be subject to suspension pursuant to this section rather than
12 to penalty pursuant to Section 17812.09.

13 (b) When subdivision (a) is applicable, the Secretary of State
14 shall notify the worker cooperative company that its powers, rights,
15 and privileges will be suspended after 60 days if it fails to file a
16 statement pursuant to Section 17802.09.

17 (c) After the expiration of the 60-day period without any
18 statement filed pursuant to Section 17802.09, the Secretary of State
19 shall notify the Franchise Tax Board of the suspension, and shall
20 provide a notice of the suspension to the worker cooperative
21 company and thereupon, except for the purpose of amending the
22 articles of organization to set forth a new name, the powers, rights,
23 and privileges of the worker cooperative company are suspended.

24 (d) A statement pursuant to Section 17802.09 may be filed
25 notwithstanding suspension of the powers, rights, and privileges
26 pursuant to this section or Section 23301 or 23301.5 of the Revenue
27 and Taxation Code. Upon the filing of a statement pursuant to
28 Section 17802.09 by a worker cooperative company that has
29 suffered suspension pursuant to this section, the Secretary of State
30 shall certify that fact to the Franchise Tax Board and the worker
31 cooperative company may thereupon be relieved from suspension
32 unless the worker cooperative company is held in suspension by
33 the Franchise Tax Board by reason of Section 23301 or 23301.5
34 of the Revenue and Taxation Code.

35 17812.12. (a) A worker cooperative company is liable for a
36 civil penalty in an amount not exceeding one million dollars
37 (\$1,000,000) if the worker cooperative company does both of the
38 following:

39 (1) Has actual knowledge that a member, officer, manager, or
40 agent of the worker cooperative company does any of the following:

1 (A) Makes, publishes, or posts, or has made, published, or
2 posted, either generally or privately to the shareholders or other
3 persons, either of the following:

4 (i) An oral, written, or electronically transmitted report, exhibit,
5 notice, or statement of its affairs or pecuniary condition that
6 contains a material statement or omission that is false and intended
7 to give membership shares in the worker cooperative company a
8 materially greater or a materially less apparent market value than
9 they really possess.

10 (ii) An oral, written, or electronically transmitted report,
11 prospectus, account, or statement of operations, values, business,
12 profits, or expenditures that includes a material false statement
13 or omission intended to give membership shares in the worker
14 cooperative company a materially greater or a materially less
15 apparent market value than they really possess.

16 (B) Refuses or has refused to make any book entry or post any
17 notice required by law in the manner required by law.

18 (C) Misstates or conceals or has misstated or concealed from
19 a regulatory body a material fact in order to deceive a regulatory
20 body to avoid a statutory or regulatory duty, or to avoid a statutory
21 or regulatory limit or prohibition.

22 (2) Within 30 days after actual knowledge is acquired of the
23 actions described in paragraph (1), the worker cooperative
24 company knowingly fails to do both of the following:

25 (A) Notify the Attorney General or appropriate government
26 agency in writing, unless the worker cooperative company has
27 actual knowledge that the Attorney General or appropriate
28 government agency has been notified.

29 (B) Notify its members and investors in writing, unless the
30 worker cooperative company has actual knowledge that the
31 members and investors have been notified.

32 (b) The requirement for notification under this section is not
33 applicable if the action taken or about to be taken by the worker
34 cooperative company, or by a member, officer, manager, or agent
35 of the worker cooperative company under paragraph (1) of
36 subdivision (a), is abated within the time prescribed for reporting,
37 unless the appropriate government agency requires disclosure by
38 regulation.

39 (c) If the action reported to the Attorney General pursuant to
40 this section implicates the government authority of an agency other

1 *than the Attorney General, the Attorney General shall promptly*
2 *forward the written notice to that agency.*

3 *(d) If the Attorney General was not notified pursuant to*
4 *subparagraph (A) of paragraph (2) of subdivision (a), but the*
5 *worker cooperative company reasonably and in good faith believed*
6 *that it had complied with the notification requirements of this*
7 *section by notifying a government agency listed in paragraph (5)*
8 *of subdivision (e), no penalties shall apply.*

9 *(e) For purposes of this section:*

10 *(1) "Manager" means a person defined by subdivision (m) of*
11 *Section 17801.01 having both of the following:*

12 *(A) Management authority over the worker cooperative*
13 *company.*

14 *(B) Significant responsibility for an aspect of the worker*
15 *cooperative company that includes actual authority for the*
16 *financial operations or financial transactions of the worker*
17 *cooperative company.*

18 *(2) "Agent" means a person or entity authorized by the worker*
19 *cooperative company to make representations to the public about*
20 *the worker cooperative company's financial condition and who is*
21 *acting within the scope of the agency when the representations*
22 *are made.*

23 *(3) "Member" means a person as defined by subdivision (o) of*
24 *Section 17801.01 that is a member of the worker cooperative*
25 *company at the time the disclosure is required pursuant to*
26 *subparagraph (B) of paragraph (2) of subdivision (a).*

27 *(4) "Notify its members" means to give sufficient description*
28 *of an action taken or about to be taken that would constitute acts*
29 *or omissions as described in paragraph (1) of subdivision (a). A*
30 *notice or report filed by a worker cooperative company with the*
31 *United States Securities and Exchange Commission that relates*
32 *to the facts and circumstances giving rise to an obligation under*
33 *paragraph (1) of subdivision (a) shall satisfy all notice*
34 *requirements arising under paragraph (2) of subdivision (a) but*
35 *shall not be the exclusive means of satisfying the notice*
36 *requirements, provided that the Attorney General or appropriate*
37 *agency is informed in writing that the filing has been made together*
38 *with a copy of the filing or an electronic link where it is available*
39 *online without charge.*

1 (5) “Appropriate government agency” means an agency on the
2 following list that has regulatory authority with respect to the
3 financial operations of a worker cooperative company:

4 (A) Department of Business Oversight.

5 (B) Department of Insurance.

6 (C) Department of Financial Institutions.

7 (D) Department of Managed Health Care.

8 (E) United States Securities and Exchange Commission.

9 (6) “Actual knowledge of the worker cooperative company”
10 means the knowledge a member, officer, or manager of a worker
11 cooperative company actually possesses or does not consciously
12 avoid possessing, based on an evaluation of information provided
13 pursuant to the worker cooperative company’s disclosure controls
14 and procedures.

15 (7) “Refuse to make a book entry” means the intentional
16 decision not to record an accounting transaction when all of the
17 following conditions are satisfied:

18 (A) The independent auditors required recordation of an
19 accounting transaction during the course of an audit.

20 (B) The audit committee of the worker cooperative company
21 has not approved the independent auditor’s recommendation.

22 (C) The decision is made for the primary purpose of rendering
23 the financial statements materially false or misleading.

24 (8) “Refuse to post any notice required by law” means an
25 intentional decision not to post a notice required by law when all
26 of the following conditions exist:

27 (A) The decision not to post the notice has not been approved
28 by the worker cooperative company’s audit committee.

29 (B) The decision is intended to give the membership shares in
30 the worker cooperative company a materially greater or a
31 materially less apparent market value than they really possess.

32 (9) “Misstate or conceal material facts from a regulatory body”
33 means an intentional decision not to disclose material facts when
34 all of the following conditions exist:

35 (A) The decision not to disclose material facts has not been
36 approved by the worker cooperative company’s audit committee.

37 (B) The decision is intended to give the membership shares in
38 the worker cooperative company a materially greater or a
39 materially less apparent market value than they really possess.

1 (10) “Material false statement or omission” means an untrue
2 statement of material fact or an omission to state a material fact
3 necessary in order to make the statements made under the
4 circumstances under which they were made not misleading.

5 (11) “Officer” means a person appointed pursuant to Section
6 17803.02, except an officer of a specified subsidiary worker
7 cooperative company who is not also an officer of the parent
8 worker cooperative company.

9 (f) This section only applies to worker cooperative companies
10 that are issuers, as defined in Section 2 of the federal
11 Sarbanes-Oxley Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

12 (g) An action to enforce this section may only be brought by the
13 Attorney General or a district attorney or city attorney in the name
14 of the people of the State of California.

15 ~~SEC. 5.~~

16 SEC. 6. Section 25100 of the Corporations Code is amended
17 to read:

18 25100. The following securities are exempted from Sections
19 25110, 25120, and 25130:

20 (a) Any security (including a revenue obligation) issued or
21 guaranteed by the United States, any state, any city, county, city
22 and county, public district, public authority, public corporation,
23 public entity, or political subdivision of a state or any agency or
24 corporate or other instrumentality of any one or more of the
25 foregoing; or any certificate of deposit for any of the foregoing.

26 (b) Any security issued or guaranteed by Canada, any Canadian
27 province, any political subdivision or municipality of that province,
28 or by any other foreign government with which the United States
29 currently maintains diplomatic relations, if the security is
30 recognized as a valid obligation by the issuer or guarantor; or any
31 certificate of deposit for any of the foregoing.

32 (c) Any security issued or guaranteed by and representing an
33 interest in or a direct obligation of a national bank or a bank or
34 trust company incorporated under the laws of this state, and any
35 security issued by a bank to one or more other banks and
36 representing an interest in an asset of the issuing bank.

37 (d) Any security issued or guaranteed by a federal savings
38 association or federal savings bank or federal land bank or joint
39 land bank or national farm loan association or by any savings
40 association, as defined in subdivision (a) of Section 5102 of the

1 Financial Code, which is subject to the supervision and regulation
2 of the Commissioner of Financial Institutions of this state.

3 (e) Any security (other than an interest in all or portions of a
4 parcel or parcels of real property which are subdivided land or a
5 subdivision or in a real estate development), the issuance of which
6 is subject to authorization by the Insurance Commissioner, the
7 Public Utilities Commission, or the Real Estate Commissioner of
8 this state.

9 (f) Any security consisting of any interest in all or portions of
10 a parcel or parcels of real property which are subdivided lands or
11 a subdivision or in a real estate development; provided that the
12 exemption in this subdivision shall not be applicable to: (1) any
13 investment contract sold or offered for sale with, or as part of, that
14 interest, or (2) any person engaged in the business of selling,
15 distributing, or supplying water for irrigation purposes or domestic
16 use that is not a public utility except that the exemption is
17 applicable to any security of a mutual water company (other than
18 an investment contract as described in paragraph (1)) offered or
19 sold in connection with subdivided lands pursuant to Chapter 2
20 (commencing with Section 14310) of Part 7 of Division 3 of Title
21 1.

22 (g) Any mutual capital certificates or savings accounts, as
23 defined in the Savings Association Law, issued by a savings
24 association, as defined by subdivision (a) of Section 5102 of the
25 Financial Code, and holding a license or certificate of authority
26 then in force from the Commissioner of Financial Institutions of
27 this state.

28 (h) Any security issued or guaranteed by any federal credit
29 union, or by any credit union organized and supervised, or
30 regulated, under the Credit Union Law.

31 (i) Any security issued or guaranteed by any railroad, other
32 common carrier, public utility, or public utility holding company
33 which is (1) subject to the jurisdiction of the Interstate Commerce
34 Commission or its successor or (2) a holding company registered
35 with the Securities and Exchange Commission under the Public
36 Utility Holding Company Act of 1935 or a subsidiary of that
37 company within the meaning of that act or (3) regulated in respect
38 of the issuance or guarantee of the security by a governmental
39 authority of the United States, of any state, of Canada or of any

1 Canadian province; and the security is subject to registration with
2 or authorization of issuance by that authority.

3 (j) Any security (except evidences of indebtedness, whether
4 interest bearing or not) of an issuer (1) organized exclusively for
5 educational, benevolent, fraternal, religious, charitable, social, or
6 reformatory purposes and not for pecuniary profit, if no part of the
7 net earnings of the issuer inures to the benefit of any private
8 shareholder or individual, or (2) organized as a chamber of
9 commerce or trade or professional association. The fact that
10 amounts received from memberships or dues or both will or may
11 be used to construct or otherwise acquire facilities for use by
12 members of the nonprofit organization does not disqualify the
13 organization for this exemption. This exemption does not apply
14 to the securities of any nonprofit organization if any promoter
15 thereof expects or intends to make a profit directly or indirectly
16 from any business or activity associated with the organization or
17 operation of that nonprofit organization or from remuneration
18 received from that nonprofit organization.

19 (k) Any agreement, commonly known as a “life income
20 contract,” of an issuer (1) organized exclusively for educational,
21 benevolent, fraternal, religious, charitable, social, or reformatory
22 purposes and not for pecuniary profit and (2) which the
23 commissioner designates by rule or order, with a donor in
24 consideration of a donation of property to that issuer and providing
25 for the payment to the donor or persons designated by him or her
26 of income or specified periodic payments from the donated
27 property or other property for the life of the donor or those other
28 persons.

29 (l) Any note, draft, bill of exchange, or banker’s acceptance
30 which is freely transferable and of prime quality, arises out of a
31 current transaction or the proceeds of which have been or are to
32 be used for current transactions, and which evidences an obligation
33 to pay cash within nine months of the date of issuance, exclusive
34 of days of grace, or any renewal of that paper which is likewise
35 limited, or any guarantee of that paper or of that renewal, provided
36 that the paper is not offered to the public in amounts of less than
37 twenty-five thousand dollars (\$25,000) in the aggregate to any one
38 purchaser. In addition, the commissioner may, by rule or order,
39 exempt any issuer of any notes, drafts, bills of exchange or banker’s
40 acceptances from qualification of those securities when the

1 commissioner finds that the qualification is not necessary or
2 appropriate in the public interest or for the protection of investors.

3 (m) Any security issued by any corporation organized and
4 existing under the provisions of Chapter 1 (commencing with
5 Section 54001) of Division 20 of the Food and Agricultural Code.

6 (n) Any beneficial interest in an employees' pension,
7 profit-sharing, stock bonus or similar benefit plan which meets the
8 requirements for qualification under Section 401 of the federal
9 Internal Revenue Code or any statute amendatory thereof or
10 supplementary thereto. A determination letter from the Internal
11 Revenue Service stating that an employees' pension, profit-sharing,
12 stock bonus or similar benefit plan meets those requirements shall
13 be conclusive evidence that the plan is an employees' pension,
14 profit-sharing, stock bonus or similar benefit plan within the
15 meaning of the first sentence of this subdivision until the date the
16 determination letter is revoked in writing by the Internal Revenue
17 Service, regardless of whether or not the revocation is retroactive.

18 (o) Any security listed or approved for listing upon notice of
19 issuance on a national securities exchange, if the exchange has
20 been certified by rule or order of the commissioner and any warrant
21 or right to purchase or subscribe to the security. The exemption
22 afforded by this subdivision does not apply to securities listed or
23 approved for listing upon notice of issuance on a national securities
24 exchange, in a rollup transaction unless the rollup transaction is
25 an eligible rollup transaction as defined in Section 25014.7.

26 That certification of any exchange shall be made by the
27 commissioner upon the written request of the exchange if the
28 commissioner finds that the exchange, in acting on applications
29 for listing of common stock, substantially applies the minimum
30 standards set forth in either subparagraph (A) or (B) of paragraph
31 (1), and, in considering suspension or removal from listing,
32 substantially applies each of the criteria set forth in paragraph (2).

33 (1) Listing standards:

34 (A) (i) Shareholders' equity of at least four million dollars
35 (\$4,000,000).

36 (ii) Pretax income of at least seven hundred fifty thousand
37 dollars (\$750,000) in the issuer's last fiscal year or in two of its
38 last three fiscal years.

39 (iii) Minimum public distribution of 500,000 shares (exclusive
40 of the holdings of officers, directors, controlling shareholders, and

1 other concentrated or family holdings), together with a minimum
2 of 800 public holders or minimum public distribution of 1,000,000
3 shares together with a minimum of 400 public holders. The
4 exchange may also consider the listing of a company's securities
5 if the company has a minimum of 500,000 shares publicly held, a
6 minimum of 400 shareholders and daily trading volume in the
7 issue has been approximately 2,000 shares or more for the six
8 months preceding the date of application. In evaluating the
9 suitability of an issue for listing under this trading provision, the
10 exchange shall review the nature and frequency of that activity
11 and any other factors as it may determine to be relevant in
12 ascertaining whether the issue is suitable for trading. A security
13 that trades infrequently shall not be considered for listing under
14 this paragraph even though average daily volume amounts to 2,000
15 shares per day or more.

16 Companies whose securities are concentrated in a limited
17 geographical area, or whose securities are largely held in block by
18 institutional investors, normally may not be considered eligible
19 for listing unless the public distribution appreciably exceeds
20 500,000 shares.

21 (iv) Minimum price of three dollars (\$3) per share for a
22 reasonable period of time prior to the filing of a listing application;
23 provided, however, in certain instances an exchange may favorably
24 consider listing an issue selling for less than three dollars (\$3) per
25 share after considering all pertinent factors, including market
26 conditions in general, whether historically the issue has sold above
27 three dollars (\$3) per share, the applicant's capitalization, and the
28 number of outstanding and publicly held shares of the issue.

29 (v) An aggregate market value for publicly held shares of at
30 least three million dollars (\$3,000,000).

31 (B) (i) Shareholders' equity of at least four million dollars
32 (\$4,000,000).

33 (ii) Minimum public distribution set forth in clause (iii) of
34 subparagraph (A) of paragraph (1).

35 (iii) Operating history of at least three years.

36 (iv) An aggregate market value for publicly held shares of at
37 least fifteen million dollars (\$15,000,000).

38 (2) Criteria for consideration of suspension or removal from
39 listing:

40 (i)

1 (A) If a company that (A) has shareholders' equity of less than
2 one million dollars (\$1,000,000) has sustained net losses in each
3 of its two most recent fiscal years, or (B) has net tangible assets
4 of less than three million dollars (\$3,000,000) and has sustained
5 net losses in three of its four most recent fiscal years.

6 ~~(ii)~~

7 (B) If the number of shares publicly held (excluding the holdings
8 of officers, directors, controlling shareholders and other
9 concentrated or family holdings) is less than 150,000.

10 ~~(iii)~~

11 (C) If the total number of shareholders is less than 400 or if the
12 number of shareholders of lots of 100 shares or more is less than
13 300.

14 ~~(iv)~~

15 (D) If the aggregate market value of shares publicly held is less
16 than seven hundred fifty thousand dollars (\$750,000).

17 ~~(v)~~

18 (E) If shares of common stock sell at a price of less than three
19 dollars (\$3) per share for a substantial period of time and the issuer
20 shall fail to effectuate a reverse stock split of the shares within a
21 reasonable period of time after being requested by the exchange
22 to take that action.

23 A national securities exchange, certified by rule or order of the
24 commissioner under this subdivision, shall file annual reports when
25 requested to do so by the commissioner. The annual reports shall
26 contain, by issuer: the variances granted to an exchange's listing
27 standards, including variances from corporate governance and
28 voting rights' standards, for any security of that issuer; the reasons
29 for the variances; a discussion of the review procedure instituted
30 by the exchange to determine the effect of the variances on
31 investors and whether the variances should be continued; and any
32 other information that the commissioner deems relevant. The
33 purpose of these reports is to assist the commissioner in
34 determining whether the quantitative and qualitative requirements
35 of this subdivision are substantially being met by the exchange in
36 general or with regard to any particular security.

37 The commissioner after appropriate notice and opportunity for
38 hearing in accordance with the provisions of the Administrative
39 Procedure Act, Chapter 5 (commencing with Section 11500) of
40 Part 1 of Division 3 of Title 2 of the Government Code, may, in

1 his or her discretion, by rule or order, decertify any exchange
2 previously certified that ceases substantially to apply the minimum
3 standards or criteria as set forth in paragraphs (1) and (2).

4 A rule or order of certification shall conclusively establish that
5 any security listed or approved for listing upon notice of issuance
6 on any exchange named in a rule or order of certification, and any
7 warrant or right to purchase or subscribe to that security, is exempt
8 under this subdivision until the adoption by the commissioner of
9 any rule or order decertifying the exchange.

10 (p) A promissory note secured by a lien on real property, which
11 is neither one of a series of notes of equal priority secured by
12 interests in the same real property nor a note in which beneficial
13 interests are sold to more than one person or entity.

14 (q) Any unincorporated interindemnity or reciprocal or
15 interinsurance contract, that qualifies under the provisions of
16 Section 1280.7 of the Insurance Code, between members of a
17 cooperative corporation, organized and operating under Part 2
18 (commencing with Section 12200) of Division 3 of Title 1, and
19 whose members consist only of physicians and surgeons licensed
20 in California, which contracts indemnify solely in respect to
21 medical malpractice claims against the members, and which do
22 not collect in advance of loss any moneys other than contributions
23 by each member to a collective reserve trust fund or for necessary
24 expenses of administration.

25 (1) Whenever it appears to the commissioner that any person
26 has engaged or is about to engage in any act or practice constituting
27 a violation of any provision of Section 1280.7 of the Insurance
28 Code, the commissioner may, in the commissioner's discretion,
29 bring an action in the name of the people of the State of California
30 in the superior court to enjoin the acts or practices or to enforce
31 compliance with Section 1280.7 of the Insurance Code. Upon a
32 proper showing a permanent or preliminary injunction, a restraining
33 order, or a writ of mandate shall be granted and a receiver or
34 conservator may be appointed for the defendant or the defendant's
35 assets.

36 (2) The commissioner may, in the commissioner's discretion,
37 (A) make public or private investigations within or outside of this
38 state as the commissioner deems necessary to determine whether
39 any person has violated or is about to violate any provision of
40 Section 1280.7 of the Insurance Code or to aid in the enforcement

1 of Section 1280.7, and (B) publish information concerning the
2 violation of Section 1280.7.

3 (3) For the purpose of any investigation or proceeding under
4 this section, the commissioner or any officer designated by the
5 commissioner may administer oaths and affirmations, subpoena
6 witnesses, compel their attendance, take evidence, and require the
7 production of any books, papers, correspondence, memoranda,
8 agreements, or other documents or records which the commissioner
9 deems relevant or material to the inquiry.

10 (4) In case of contumacy by, or refusal to obey a subpoena
11 issued to, any person, the superior court, upon application by the
12 commissioner, may issue to the person an order requiring the
13 person to appear before the commissioner, or the officer designated
14 by the commissioner, to produce documentary evidence, if so
15 ordered, or to give evidence touching the matter under investigation
16 or in question. Failure to obey the order of the court may be
17 punished by the court as a contempt.

18 (5) No person is excused from attending or testifying or from
19 producing any document or record before the commissioner or in
20 obedience to the subpoena of the commissioner or any officer
21 designated by the commissioner, or in any proceeding instituted
22 by the commissioner, on the ground that the testimony or evidence
23 (documentary or otherwise), required of the person may tend to
24 incriminate the person or subject the person to a penalty or
25 forfeiture, but no individual may be prosecuted or subjected to any
26 penalty or forfeiture for or on account of any transaction, matter,
27 or thing concerning which the person is compelled, after validly
28 claiming the privilege against self-incrimination, to testify or
29 produce evidence (documentary or otherwise), except that the
30 individual testifying is not exempt from prosecution and
31 punishment for perjury or contempt committed in testifying.

32 (6) The cost of any review, examination, audit, or investigation
33 made by the commissioner under Section 1280.7 of the Insurance
34 Code shall be paid to the commissioner by the person subject to
35 the review, examination, audit, or investigation, and the
36 commissioner may maintain an action for the recovery of these
37 costs in any court of competent jurisdiction. In determining the
38 cost, the commissioner may use the actual amount of the salary or
39 other compensation paid to the persons making the review,
40 examination, audit, or investigation plus the actual amount of

1 expenses including overhead reasonably incurred in the
2 performance of the work.

3 The recoverable cost of each review, examination, audit, or
4 investigation made by the commissioner under Section 1280.7 of
5 the Insurance Code shall not exceed twenty-five thousand dollars
6 (\$25,000), except that costs exceeding twenty-five thousand dollars
7 (\$25,000) shall be recoverable if the costs are necessary to prevent
8 a violation of any provision of Section 1280.7 of the Insurance
9 Code.

10 (r) (1) Any shares or memberships issued by any corporation
11 organized and existing pursuant to the provisions of Part 2
12 (commencing with Section 12200) of Division 3 of Title 1,
13 provided the aggregate investment of any shareholder or member
14 in shares or memberships sold pursuant to this subdivision does
15 not exceed three hundred dollars (\$300). This exemption does not
16 apply to the shares or memberships of that corporation if any
17 promoter thereof expects or intends to make a profit directly or
18 indirectly from any business or activity associated with the
19 corporation or the operation of the corporation or from
20 remuneration, other than reasonable salary, received from the
21 corporation. This exemption does not apply to nonvoting shares
22 or memberships of that corporation issued to any person who does
23 not possess, and who will not acquire in connection with the
24 issuance of nonvoting shares or memberships, voting power
25 (Section 12253) in the corporation. This exemption also does not
26 apply to shares or memberships issued by a nonprofit cooperative
27 corporation organized to facilitate the creation of an unincorporated
28 interindemnity arrangement that provides indemnification for
29 medical malpractice to its physician and surgeon members as set
30 forth in subdivision (q).

31 (2) Notwithstanding paragraph (1), any membership issued by
32 a worker cooperative company organized and existing pursuant to
33 the provisions of Division 2 (commencing with Section 17801.01)
34 of Title 2.6, provided the primary motivation of the purchaser is
35 to use or consume the products or services of the worker
36 cooperative company or to otherwise patronize the worker
37 cooperative company and is not primarily motivated by the
38 prospect of a return on investment, shall be exempted from Sections
39 25110, 25120, and 25130.

1 (s) Any security consisting of or representing an interest in a
2 pool of mortgage loans that meets each of the following
3 requirements:

4 (1) The pool consists of whole mortgage loans or participation
5 interests in those loans, which loans were originated or acquired
6 in the ordinary course of business by a national bank or federal
7 savings association or federal savings bank having its principal
8 office in this state, by a bank incorporated under the laws of this
9 state or by a savings association as defined in subdivision (a) of
10 Section 5102 of the Financial Code and which is subject to the
11 supervision and regulation of the Commissioner of Financial
12 Institutions, and each of which at the time of transfer to the pool
13 is an authorized investment for the originating or acquiring
14 institution.

15 (2) The pool of mortgage loans is held in trust by a trustee which
16 is a financial institution specified in paragraph (1) as trustee or
17 otherwise.

18 (3) The loans are serviced by a financial institution specified in
19 paragraph (1).

20 (4) The security is not offered in amounts of less than
21 twenty-five thousand dollars (\$25,000) in the aggregate to any one
22 purchaser.

23 (5) The security is offered pursuant to a registration under the
24 Securities Act of 1933, or pursuant to an exemption under
25 Regulation A under that act, or in the opinion of counsel for the
26 issuer, is offered pursuant to an exemption under Section 4(2) of
27 that act.

28 (t) (1) Any security issued or guaranteed by and representing
29 an interest in or a direct obligation of an industrial loan company
30 incorporated under the laws of the state and authorized by the
31 Commissioner of Financial Institutions to engage in industrial loan
32 business.

33 (2) Any investment certificate in or issued by any industrial
34 loan company that is organized under the laws of a state of the
35 United States other than this state, that is insured by the Federal
36 Deposit Insurance Corporation, and that maintains a branch office
37 in this state.

38 ~~SEC. 6:~~

39 *SEC. 7.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O